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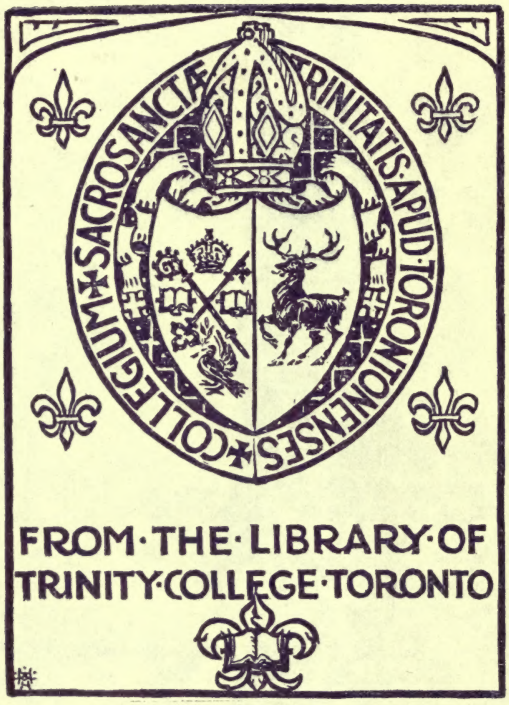

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CHURCH LAW:

BEING

A CONCISE DICTIONARY

OF

STATUTES, CANONS, REGULATIONS,

AND DECIDED CASES

AFFECTING THE

CLERGY AND LAITY.

BY

BENJAMIN WHITEHEAD, B.A.,

OF THE MIDDLE TEMPLE, ESQUIRE, BARRISTER-AT-LAW, AND SOMETIME SCHOLAR.

THIRD EDITION.

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DEDICATION TO FIRST EDITION.

TO

MY FATHER AND MOTHER

This Book

IS

AFFECTIONATELY INSCRIBED.

PREFACE

TO

THIRD EDITION.

In this Edition I have adhered to the original plan and style of the Book. Many cases of importance have been decided since the appearance of the Second Edition, including *Rex* v. *Archbishop of Canterbury*, on objections to bishops; and several Acts of Parliament on ecclesiastical matters have been placed on the statute book. A new Table of Ecclesiastical Fees has been approved by the Privy Council. All these will be found in the proper places.

The judgment of the House of Lords in the *London Street Tramways Co.* v. *London County Council* has again laid it down that an ultimate Court of Appeal cannot reverse its own decisions on questions of law. If this rule be logically applied, the decision in *Hebbert* v. *Purchas* is still good law, and

the mischief caused by varying decisions of the Privy Council is removed. Thus the "Eastward Position" and the "Mixed Chalice" become illegal under all circumstances, and ecclesiastical law is simplified.

B. W.

2, Brick Court, Temple, E.C.
June, 1911.

PREFACE

TO

FIRST EDITION.

My apology for placing this book before the clergy, the profession, and the public, is that there appears to be a demand for a work on Church Law, which, while much less voluminous than the great treatises on the subject, would still be comprehensive. This book, therefore, deals with the laws of England relating to advowsons, tithes (including the Act of 1891), glebe lands, offerings, and other Church property; archbishops, bishops, and other dignitaries; the clergy generally, and the rights and duties of incumbents, curates, and chaplains; vestries and churchwardens, and other parish officers; public worship; church ornaments; vestments and ritual (including the recent *Lincoln case*); the doctrines sanctioned by the Church of England, in all cases where there has been any dispute: the sacraments; marriage, ordination, and other rites of the Church; charities and mortmain (including the Act of 1891); the division and union of parishes; feasts and fasts; Church discipline and general procedure in the Ecclesiastical Courts; blasphemy, simony, sacrilege, &c.; convocations and synods; Jews and Dissenters, &c. The various fees and stamp duties payable have in all cases been given in detail; also the forms of the most important declarations, notices, &c. Incidentally the doctrines and usages of the Greek and Roman Churches, and of the various sects of Protestants, also Church history and statistics, have been touched upon. The nature of "establishment" and the status of the Churches of England and Scotland at home and abroad have been defined;

and I venture to think that practically the whole of the law ecclesiastical is dealt with either in outline or detail, and that the book comprises all the Church Law a clergyman, layman, or practising lawyer is likely to require in ordinary cases. In addition, the sources have been indicated from which further and more detailed information may be obtained.

In order to save space I have, as a rule, refrained from giving lengthy extracts from the Articles, Canons, and other easily accessible authorities (*a*); and when there is a long list of decided cases on a particular point, as a general rule, the last case only has been cited.

The dictionary form I have adopted as being, with all its faults, the best for ready reference; and a list has been added of some important matters which have been dealt with in the book but to which separate articles have not been devoted.

B. W.

9, Stone Buildings, Lincoln's Inn, W.C.
April, 1892.

(*a*) The Articles are appended to every Prayer Book, and a copy of the Canons can be obtained for a few pence. There is (or should be) a copy of the Homilies in every church.

CHURCH LAW.

ABSOLUTION, or Remission of Sins. According to the form in the Morning and Evening Prayer, the Communion Service, and the Service for use at Sea, the minister declares or prays for a *conditional* absolution. In the Office for the Visitation of the Sick, the words are apparently *absolute,* "I absolve thee;" but it would probably be held (if the point were to arise) that this form is declaratory and conditional also, as the words preceding the absolution seem to show. The Church of Ireland (*q. v.*) in revising its Prayer Book has taken this view, and has substituted the precatory for the absolute form (*a*).

Therefore, although at his ordination the newly-made priest is told, both in the Church of England and Ireland, "whose sins thou dost forgive they are forgiven, &c." (*b*), he must not be considered to have an *absolute* power, but only an authority to declare or pray for absolution on the occasions and on the terms mentioned in the Prayer Book.

In addition to the occasions above mentioned for which forms of absolution are given, it is provided by the "warning" for the communion that any would-be communicant who cannot quiet his own conscience may go to a "minister of God's Word:" "that by the ministry of God's Holy Word he may receive the benefit of absolution, together with ghostly counsel, &c." This certainly seems to imply a power of absolution, but no form is given. (*See* CONFESSION.)

(*a*) Resolutions of the Synod (1873), 178. So also the American Church (*q. v.*).

(*b*) Founded on St. John, xx. 23.

There has been much difference of opinion among English theologians as to whether only a priest ought to be allowed to pronounce the absolution (*c*); but it would seem that in the Church of England the law has always authorized a deacon to do so (*d*). The only argument to the contrary is, that a deacon receives no express commission for the purpose at his ordination (*e*). But to this it may be objected—(1) that the reading of the absolution does not purport to be an exercise of the absolute priestly commission; (2) that a deacon receives no commission at his ordination to perform Divine Service *alone*, to marry, or to bury, yet he is bound by Acts of Parliament, as well as Church custom, to perform these functions if called upon.

The arguments in favour of a deacon reading the absolution are as follows; and it may be useful to consider them somewhat in detail here, as they apply also to other matters dealt with later on.

By the Act of Uniformity, the Morning and Evening Prayers are expressly ordered to be openly, publicly, and solemnly read in every church by some priest or deacon (*f*), and no exception is therein made for the absolution. The question next arises, Does the rubric in the Prayer Book, which directs the absolution to be pronounced by the "priest alone," cut down the general enactment? The word "alone," it is generally admitted, simply means "by himself" (*g*); and there can be no doubt that the word "priest" here signifies any minister that officiates. That this is so is seen from the way in which the word is used in other parts of the Prayer Book, *e.g.*, the versicles at Morning and Evening Prayer are directed to be said sometimes by the *minister*, and sometimes by the *priest*, a distinction which is never observed.

(*c*) Compare the Works of Bennet and Wheatley on the Prayer Book. *And see* CONFESSION.

(*d*) Even in Popish times a deacon was allowed to give penance in cases of necessity: Lynd. 430; Gib. 102.

(*e*) *See* DEACON. The Canon of 1640 might be referred to, but is of no legal value.

(*f*) 13 & 14 Car. 2, c. 4, ss. 22 and 2; and see also preface to Prayer Book.

(*g*) See Wheatley, 1845 ed. p. 119.

In the Communion Service, also, the *minister* has to rehearse the Ten Commandments, but the *priest* must read the Epistle and Gospel. In the rubrics at the commencement of the Communion Service the word "minister" evidently means "priest," and the two words are used as synonymous in the rubric preceding the Ten Commandments. The absolution itself also contains the words "and hath given power and commandment to his *ministers*."

It would therefore seem that the changes which frequently took place in the successive editions of the Prayer Book from "priest" to "minister," or "minister" to "priest," were really meaningless, and that the utmost importance which can be attached to these changes is,—that a priest is, *if possible*, to read those portions of the Service to which the word "priest" is prefixed. Any other construction would seriously impair the usefulness of a deacon, as a glance at the rubrics throughout the Prayer Book will show.

But perhaps the strongest argument is that, if it had been intended to exclude a deacon, the Act of Uniformity would have made it penal for him to read the absolution as well as to administer the Lord's Supper. It therefore seems that if no priest is present it is the statutory duty of a deacon conducting the service to read the absolution.

As the Rev. Dr. Bennet says: "It seems to be a vulgar mistake which makes the deacons deviate from their rule, and omit either the whole or else part of this form, or perhaps exchange it for a collect taken out of some other part of the Liturgy" (*h*).

It is, however, at the present day, a by no means unusual practice for a deacon reading service alone to omit the absolution, and if this could be shown to be a sufficiently universal and ancient post-Reformation custom, it would probably, as in the case of vestments (*q. v.*), be taken to form the true interpretation of the statute.

Another meaning of absolution is remission of Church

(*h*) On the Prayer Book, 2nd ed. (1709), p. 27.

censures (*i*), and it is argued by some that, so far as absolution purports to be absolute, it simply means the forgiveness of the Church as a body, conveyed by the appropriate officer (*k*).

ACOLYTE, one of the minor orders of the Church of Rome (*q. v.*). His duty was to light the church lamps and attend the officiating priest with wine for the Eucharist. The office is abolished in the Greek and English Churches. In the Roman Church the duties are now often performed by menials and boys.

It has been held illegal for a clergyman ceremonially to admit an acolyte or choir-boy in the presence of the congregation, as such action constitutes an additional and unauthorized rite or ceremony (*l*).

ADVERTISEMENTS. (*See* CANONS; VESTMENTS.)

ADVOCATE. (*See* PROCTOR.)

ADVOWSON is a perpetual right of presentation to an ecclesiastical benefice from time to time, whenever a vacancy occurs (*m*). It is a temporal right (*n*). The person entitled to present is the successor, by purchase or otherwise, of the original founder of the benefice, and is called the advocate, advowee, or patron, *i.e.*, the protector of the benefice. He cannot grant the glebe or tithes as a distinct property; these remain inseparably annexed to the advowson, and belong to the incumbent for the time being (*o*). The right of presentation and that of nomination to a church are distinct things. Presentation is the offering of a clerk to the bishop; nomination, the offering of a clerk to the patron, where the

(*i*) See 5 Eliz. c. 23, s. 5; 53 Geo. 3, c. 127, s. 1; 2 & 3 Will. 4, c. 93, s. 1; 3 & 4 Vict. c. 93, and EXCOMMUNICATION.

(*k*) See Rev. C. H. Davis on Absolution.

(*l*) *Elphinstone* v. *Purchas* (1870), L. R. 3 A. & E. 98.

(*m*) Co. Litt. 17 b, 119 b.

(*n*) Godolphin, Repertorium, 256.

(*o*) 1 Pres. Shep. T. 96.

latter is a trustee or mortgagee. Nomination is therefore an equitable right of presentation. A trustee may, however, be directed to present any fit person (*p*).

After presentation (*q. v.*) the bishop examines the presentee, and if he assents to the Protestant articles and is otherwise approved of, he is said to be admitted (*q*). The bishop then institutes him, *i.e.*, invests him with the spiritualities of the benefice, and causes him to be inducted into its temporalities. When the bishop is himself patron, presentation and institution (*q. v.*) are performed by one act, and called collation.

In addition to presentative and collative advowsons, there was, before 1899, a third kind called donative, where the King, or any subject of his licence, founded a church or chapel, and ordained that it should be merely in the gift or disposal of the patron, subject to his visitation only, not to that of the ordinary, and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution, or induction (*r*). All benefices were originally donative, but they ceased to be so if presentation or institution or augmentation from Queen Anne's Bounty (*s*) was allowed by the patron. They consequently dwindled in number, and there were but few (*t*) at the time of their abolition by the Benefices Act, 1898 (*u*). Advowsons are also either appendant or in gross, *i.e.*, annexed to one or more manors, or separate. In the Middle Ages, most advowsons were appendant to and passed with a conveyance of a manor (*x*). An advowson may be appendant for one presentation and in gross for the next (*y*).

An advowson is an incorporeal hereditament, and descends to the heir on an intestacy, but, since 1897, through the

(*p*) *Gott* v. *Nairne* (1876), 3 Ch. D. 278.

(*q*) 1 Inst. 244 a; Doctor and Student, Dia. 2, c. 26.

(*r*) 2 Bla. Com. 22.

(*s*) 1 Geo. 1, st. 2, c. 10, s. 14; *Reg.* v. *Foley* (1846), 2 C. B. 664.

(*t*) See judgment of Littledale, J., in *Rennall* v. *Lincoln* (1827), 7 B. & C. 157; and *Reg.* v. *Foley*, *ubi sup.*

(*u*) 61 & 62 Vict. c. 48, s. 12. This change in the law was generally approved. See Benefices Bills of 1897, Lord Cranbourne's Bill, No. 18, and Col. Sandys' Bill, No. 69, and the Bills of 1898.

(*x*) Dart, V. & P. 139.

(*y*) 3 Cruise, t. 21.

administrators (*y*). It may be held in fee simple, fee tail, for life or years, in possession, reversion, or remainder, in joint tenancy, coparcenary, and in common in a similar way to a piece of land (*z*), subject to the provisions of the Benefices Act, 1898 (*a*). The right of presentation to a church may also be held in "medieties," *i.e.*, there may be two separate advowsons and two incumbents of the same church, one of one moiety and the other of the other moiety (*b*). These medieties may be consolidated.

The entire advowson or the next presentation or any number of presentations (being the whole interest of the transferor) may be devised by will or sold and granted away or exchanged, subject to the rules against simony (*q. v.*), which have been made more stringent by the Benefices Act, 1898 (*c*). When appendant the advowson is conveyed by any kind of assurance which passes the manor, *e.g.*, deed of grant, exchange, &c., and a devise of the manor will include it. An advowson in gross may be conveyed by deed. An advowson being a hereditament will pass under the word "hereditaments," if an intention that it should can be gathered from the rest of the deed; but the words "hereditaments situate at" a certain place do not form an appropriate or apt description of an advowson (*d*). The same remark would apply to "tenements" and "real estate" (*e*). It would seem that the word "land" does not (*f*), but the words "ecclesia" (*g*) and "living" do, pass an advowson (*h*). Where a testator directs an advowson to be sold upon the death of the incumbent, it cannot be sold during his lifetime, in spite of the obvious advantages of so doing (*i*).

(*y*) See Land Transfer Act, 1897 (60 & 61 Vict. c. 65).

(*z*) 3 Cruise, t. 21; and *Re Tharp* or *Sharp* (1876), 3 Ch. D. 59.

(*a*) 61 & 62 Vict. c. 48.

(*b*) Co. Litt. 17 b, 18 a; *Welch* v. *Peterborough* (1885), 15 Q. B. D. 432.

(*c*) 61 & 62 Vict. c. 48, s. 1.

(*d*) *Crompton* v. *Jarrett* (1885), 30 Ch. D. 315.

(*e*) See *Re Hodgson*, [1898] 2 Ch. 545.

(*f*) 3 Atk. 460. In the Wills Act, 1837, "real estate" includes "advowsons"; but "land" under 3 & 4 Will. 4, c. 27, s. 1, does not. *Brooks* v. *Muckleston*, [1909] 2 Ch. 519.

(*g*) Com. Dig. 1, 521.

(*h*) *Webb* v. *Byng* (1856), 2 K. & J. 669; affirmed 10 H. L. C. 171.

(*i*) *Johnson* v. *Baber* (1845), 8 Beav. 233; *Want* v. *Stallibrass* (1873), L. R. 8 Exch. at p. 180.

When an incumbent is promoted to a bishopric in England or Wales the Crown presents to the vacancy, and the owner of a "next presentation" must wait for another avoidance (*k*).

The title to an advowson may be registered under the Land Transfer Act, 1875, sect. 82. There are many advantages in this, and it is probable that registration of titles will be compulsory before long (*l*). Unless registered or limited by condition, the title to an advowson must be carried back for 100 years, except in cases clearly within sect. 30 of 3 & 4 Will. 4, c. 27 (*m*). Where a vacancy occurs pending discussions on the title of an advowson, the purchaser must as a general rule accept the title; and in one case the right to present was denied him on the ground of his objections to title having been frivolous, but the case is said to be of doubtful authority (*n*). In an action to enforce an agreement for sale, the vendors may be restrained from presenting, and the bishop from instituting, any clerk not nominated by the purchaser. The bishop may also be restrained from taking advantage of a lapse pending the action (*o*).

The Statutes of Limitation prevent the recovery of an advowson after three successive adverse incumbencies, or sixty years (whichever is longer), reckoning therein incumbencies by lapse, but not incumbencies after promotion to bishoprics (*p*). This applies to a bishop being patron, unless he presents by lapse (*q*). Successive adverse incumbencies extending over 100 years form an absolute bar, unless the benefice has been since enjoyed under a rightful presentation, and in calculating this period a presentation adverse to the owner of the particular estate is considered adverse to remaindermen (*r*).

(*k*) *Troward* v. *Cailland* (1795), 6 T. R. 439. *And see* BISHOP.

(*l*) See Land Transfer Act, 1897 (60 & 61 Vict. c. 65).

(*m*) Smith's Real Ppty. 1618 a; Dart & Barber, 334.

(*n*) *Wyvill* v. *Exeter* (1815), 1 Price, 292; see Dart & Barber, p. 287.

(*o*) *Nicholson* v. *Knapp* (1838), 9 Sim. 326; *Greenslade* v. *Dare* (1853), 17 Beav. 502.

(*p*) 3 & 4 Will. 4, c. 27, ss. 30, 31.

(*q*) 6 & 7 Vict. c. 54, s. 3.

(*r*) 3 & 4 Will. 4, c. 27, ss. 32, 33.

An advowson is a very ineligible subject for mortgage. It produces no annual profit, and the mortgagee has only the bare right of presentation, the mortgagor being able to compel him to present his nominee, even though the mortgage did contain a covenant to the contrary. The only remedy of the mortgagee is to sell (*s*), but this must be subject to the rules against simony (*q. v.*), as extended by the Benefices Act, 1898.

An advowson, like other property, is assets for payment of the owner's debts, and may be sold for that purpose (*t*).

Sometimes an advowson is vested in trustees for a parish. In such a case it is now considered to be charity property though formerly this was doubted, and if in the City of London, it comes within the purview of the City of London Parochial Charities Act, 1883, and of the Charity Commissioners (*u*). Sometimes the trustees elect the minister, sometimes the general body of the parishioners. Such an advowson, unless it belongs to an endowed charity within the meaning of the Charitable Trusts Acts, may be sold, and the proceeds applied in building a parsonage, augmenting the living, repairing the church, erecting schools and chapels of ease, and in aiding the poor rate, &c. (*x*). In non-established churches the right of presentation is not usually a subject of private property; it is generally vested in trustees under the trust deed regulating the affairs of the particular congregation or in the governing body (*y*). New advowsons may be founded and conveyed to trustees upon trust to present clergymen of a particular school of thought within the limits of legal Church of England doctrine. (*See* CHARITIES.)

Under the New Parishes Acts, the Ecclesiastical Commissioners are empowered to assign the right of nomination to the incumbency of a new district in return for an endowment

(*s*) Coote on Mortgages, 178; and see *Welch* v. *Peterborough*, *ubi sup.*

(*t*) 3 Cruise, t. 21.

(*u*) *Re St. Stephen's* (1888), 39 Ch. D. 492, and cases cited in judgment.

(*x*) 19 & 20 Vict. c. 50, ss. 1, 2, 9; and generally on this subject, see Lewin on Trusts, pp. 85 *et seq.*, and Tudor on Charities.

(*y*) *See* Constitutions of Church of Ireland.

of not less than 150*l*. a year; but until assigned, the patronage belongs to his Majesty and the bishop alternately (*z*). Such an assignment is not simoniacal (*a*). The Commissioners can also exchange or transfer an advowson in order to make better provision for the cure of souls (*b*). The Lord Chancellor also has power to sell advowsons in order to augment livings in his gift (*c*).

Who may present?—All those who are solely seised in fee simple, fee tail, or for life, or possessed of a term of years of a manor to which an advowson is appendant, or of an advowson in gross. As a general rule one joint tenant, tenant in common, or trustee cannot present; all must join (*d*). A surviving trustee may present, but the trust ought to be filled up (*e*). Where coparceners cannot agree to present jointly, the eldest sister has the first turn, the second the next, and so of the rest, and this rule extends to their grantees (*f*). Joint tenants and tenants in common can obtain a right to present in turn by a partition (*g*), but in their case the order of presentation is settled by drawing lots (*h*). A presentation on an exchange counts as a turn. If one patron usurps a turn, the other has no right to usurp another by way of retaliation. He should bring an action in nature of *quare impedit* within six months (*i*). Where the right of presentation is vested in trustees for a parish, the rules laid down in the trust deed or scheme must be followed; thus, in the case of the vicarage of Leeds, the advowson of which was purchased by voluntary subscription, and afterwards by a Chancery decree, the right of election and presentation was vested in twenty-five trustees; it was held that, although the decree directed the election to take place within four months, it could be made after; that the

(*z*) *See* PARISH.
(*a*) 32 & 33 Vict. c. 94, ss. 12, 13.
(*b*) 33 & 34 Vict. c. 39, s. 1.
(*c*) 26 & 27 Vict. c. 120.
(*d*) 3 Cruise, t. 21.
(*e*) *Att.-Gen.* v. *Lichfield* (1801), 5 Ves. 824.
(*f*) 3 Cruise, t. 21, 26.
(*g*) 7 Anne, c. 18, s. 2.
(*h*) *Johnstone* v. *Baber* (1856), 25 L. J. N. S. Ch. 899.
(*i*) *Keen* v. *Denny*, [1894] 3 Ch. 169.

trustees could not depute proxies to vote for them at the election, and that such voting rendered the election void; that proper notices must be given to enable all the trustees to be present; that if there is a vacancy among the trustees it should be filled up before the election; and that after the election has been regularly held, all the trustees in person or by attorney must sign the presentation (*k*); but if either of them refuses, his concurrence can be dispensed with in a proper case (*l*). In some cases the general body of the parishioners elect; but, Lord Hardwicke said, this is the worst way of nominating (*m*).

Formerly, where a married woman was entitled, the husband presented in his own name and that of his wife, and it would seem that the Married Women's Property Acts have made no change (*n*).

Infants of any age may nominate or present, and where too young to write, the guardian guides his hand (*o*). It seems that the guardian himself cannot present (*p*). An infant cannot sell (*q*). Papists and aliens may be the owners of advowsons, but they cannot present or nominate either directly or through trustees (*r*). The patronage of papists in England and Wales, unless sold, goes, as to livings in certain counties, mostly southern, to the University of Oxford, and as to the remainder to the University of Cambridge (*s*). Where a papist is tenant in common with a protestant, or

(*k*) *Att.-Gen.* v. *Scott* (1749), 1 Ves. sen. 413; *Wilson* v. *Dennison* (1749), Amb. 82.

(*l*) *Att.-Gen.* v. *Cuming* (1843), 2 Y. & C. C. C. 139; and see *Att.-Gen.* v. *Parker* (1747), 3 Atk. 577; and *Shaw* v. *Thompson*, *ubi inf.*

(*m*) 1 Ves. sen. at p. 418; and see *Shaw* v. *Thompson* (1876), 3 Ch. D. 233, at p. 243.

(*n*) Compare ALIEN.

(*o*) *Hearle* v. *Greenbank* (1749), 3 Atk. 710; Simpson on Infants, 82.

(*p*) Co. Litt. 17 b; Simpson, 194; but *contrà*, on the terms of a special Act of Parliament, *Leigh* v. *Leigh*, [1902] 1 Ch. 400.

(*q*) As to provisions for selling infant's property, see Settled Estates Act, 1877; Conv. Act, s. 41; and Settled Land Act, 1882, s. 59; and see also Infants' Relief Act, 1874, and Simpson on Infants.

(*r*) 10 Geo. 4, c. 7, ss. 14—17; 1 Will. & Mary, sess. 1, c. 26. This extends to "joining in" a presentation; and see 13 Anne, c. 13; and *Boyer* v. *Norwich*, [1892] P. 41.

(*s*) 3 Jac. 1, c. 5, s. 13; 1 Will. & Mary, sess. 1, c. 26; 10 Geo. 4, c. 7, s. 16. As to exercise of patronage by Universities, see 61 & 62 Vict. c. 48, s. 7 (Benefices Act, 1898).

other person qualified to present, the qualified person presents alone (*t*). The patronage belonging to any office held by a papist (*u*), or a Jew (*x*), is exercised by the Archbishop of Canterbury. Lunatics and outlaws cannot, but bankrupts may, present.

The Sovereign, as the head and protector of the Church, is the patron paramount, and supplies the deficiencies of all other patrons. He usually presents by letters-patent (*y*). Although an advowson is real property and descends to the heir, if the patron dies while the church is vacant, his personal representative has the right of presentation for that turn; but if the incumbent is himself the patron, the right will devolve to his heir, and not to his personal representative for the avoidance, and the descent to the heir happening at the same instant, the title of the heir is preferred (*z*).

A *grant* of an advowson or right of presentation by any papist, or any mortgagee or trustee of any papist, is void unless made *bonâ fide* and for a full and valuable consideration to a protestant purchaser, and merely for the benefit of a protestant; and every like *devise* is similarly void if made with intent to secure the benefit thereof to the heirs or family of such papist (*a*).

Who may be presented.—A patron may present a layman or a deacon, but the presentee must assent to the articles of the Protestant religion established by law; and also take priest's orders before admission, or at any rate before institution (*b*). As to the cases in which the bishop may refuse to admit, see ALIEN; INSTITUTION.

AGNUS DEI, hymn now legal at communion service. (*See* SINGING.)

(*t*) *Edwards* v. *Exeter* (1839), 5 Bing. N. C. 652.
(*u*) 10 Geo. 4, c. 7, s. 17.
(*x*) 21 & 22 Vict. c. 49, s. 4. *See* JEWS.
(*y*) 26 Hen. 8, c. 1; 1 Eliz. c. 1.
(*z*) 3 Cruise, t. 21, 20.
(*a*) 11 Geo. 2, c. 17, s. 5; 10 Geo. 4, c. 7.
(*b*) 13 & 14 Car. 2, c. 4, s. 14; 1 Burn, 103.

AGRICULTURE, Board of. Established by Act of Parliament in 1889 to take over (*inter alia*) the powers and duties of the Land Commissioners for England, which include all the powers and duties relating to tithes originally vested in the Tithe Commissioners or Land Commissioners (*c*).

ALB (Lat. *tunica alba*) is a short closely-fitting white linen tunic, girded, used as a vestment in the pre-Reformation Church, but now illegal (*d*). It was originally something like our surplice, a full flowing white robe, and, like other ecclesiastical vestments, was worn in ordinary life (*e*). Decorations, technically called "apparels," were added in later times, but the white alb plain of the first Prayer Book of Edward VI. is the *alba pura* undecorated. The corresponding vestment of the Greek Church is called the *sticharion*, originally made of white linen, but now often of costly materials, and coloured. The word "surplice" does not seem to have come into use before the twelfth century, but that vestment is merely a modification, or rather the original form, of the sticharion or alb. The rochet (*q. v.*) is another variation.

ALIEN. Under the Naturalization Act, 1870, which is not retrospective (*f*), real and personal property of every description can be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to such property may be derived through, from or in succession to an alien as a natural-born British subject (*g*). But the section does not entitle an alien to any right or privilege as a British subject, except such as are thereby expressly given to him. Therefore, although an alien can buy or sell an advowson or any

(*c*) 52 & 53 Vict. c. 30. *See* TITHE RENTCHARGE.
(*d*) *See* VESTMENTS.
(*e*) See Smith's Dict. of Christian Antiquities.
(*f*) *Sharp* v. *St. Sauveur* (1871), 7 Ch. App. 343.
(*g*) 33 & 34 Vict. c. 14, s. 2.

presentation, it would seem that he cannot present. Before the Act he certainly could not.

Aliens wishing to officiate in foreign countries may be ordained priest or deacon by the Bishop of London, or some bishop appointed by him, without being required to take the oath of allegiance (*h*). They cannot, however, officiate in England unless they comply with the provisions of the Colonial Clergy Act, 1874 (*i*).

The Naturalization Act does not qualify an alien to hold any office he was unable to hold before. Therefore it would seem that an alien cannot hold a benefice in England, even if episcopally ordained (*k*) (though there have been instances to the contrary); but foreigners or aliens of the foreign reformed churches allowed by his Majesty, if admitted to a benefice, do not incur any penalties under the Act of Uniformity (*l*), and this applies whether they are episcopally ordained or not.

Aliens, also, cannot be churchwardens (*m*).

ALMS (*n*) are for the poor, oblations for the minister. The collection of alms forms an integral part of the Communion Service, but there is no direction as to offertories at either Morning or Evening Prayer. It seems, however, to be not unlawful for an incumbent to make a collection for charitable purposes at a service other than the Communion Service, and the churchwardens have no right to interfere with the moneys so collected unless they are raised for ordinary church expenses (*o*). After the Communion Service is ended the money given at the offertory is to be disposed to such pious and charitable uses as the minister and churchwardens shall think fit, and, if they disagree, as the ordinary

(*h*) 24 Geo. 3, sess. 2, c. 35, s. 1.
(*i*) *See* ANGLICAN COMMUNION.
(*k*) 3 Ric. 2, c. 3; 7 Ric. 2, c. 12; 1 Hen. 5, c. 7.
(*l*) 13 & 14 Car. 2, c. 4, s. 15. But this section has been thought only to apply to congregations of refugees outside the establishment.
(*m*) *Anthony* v. *Seger* (1789), 1 Hagg. Cons. 10.
(*n*) Acts ii. 42, vi. 1; and Smith's Dict.
(*o*) *Reg.* v. *O'Neill* (1867), 31 J. P. 742; *Howell* v. *Holdroyd*, [1897] P. 198.

shall appoint. The custom is to give them to the poor. The minister and churchwardens are to consult together as to the disposal of the collection, and it should be distributed, as all of them may resolve, with reference to the whole. It has, however, been stated under episcopal sanction that if they were to agree to respectively distribute the money collected in given proportions, there is no objection to their doing so. Strict accounts of the disbursements should be kept (*p*). The deacons, churchwardens, and other fit persons appointed for the purpose are to receive the alms and other devotions of the people in a decent basin (not in a bag (*q*)), and reverently bring it to the priest, who is to place it upon the Holy Table, not upon a credence table, stool, or elsewhere than on the Holy Table (*r*). The rubric does not authorize a priest or bishop to make the collection, but if he does so (and there is nothing improper in his so doing), he is not at the time "ministering or celebrating any sacrament or any Divine Service, rite or office," and he cannot proceed, under 23 & 24 Vict. c. 32, against a person molesting him (*s*). It would seem that a deacon is "ministering" (for the purposes of the Act) when collecting alms at the Communion. A chest or alms-box is to be placed in every church for the benefit of poor and needy neighbours (*t*). As a general rule, the rubric intends that the alms received at the Communion, as well in private chapels as in the parish church, should be at the disposal of the minister of the parish, and of the churchwardens, and should not belong to the officiating minister, nor to the proprietors of the chapel (*u*).

AMERICAN CHURCH, by which is meant the Protestant Episcopal Church of the United States of America. It is

(*p*) Lond. Diocese Book, 1890, p. 280.

(*q*) See The Times, May 9th, 1857, cited in Prideaux on Churchwardens, p. 65.

(*r*) Rubric, Com. Office: *Flamank* v. *Simpson* (1868), L. R. 2 A. & E. 116, 218.

(*s*) *Cope* v. *Barber* (1872), L. R. 7 C. P. 393. *And see* BRAWLING.

(*t*) Can. 84.

(*u*) *Hillcoat* v. *Moysey* (1828), 2 Hagg. 57.

one of the daughter churches of the Church of England, and a member of the Anglican Communion (*q. v.*). Its clergy may officiate in England subject to certain restrictions (*x*). It has revised the Prayer Book and Articles, and rejected the Athanasian Creed. It has about 80 bishops, including missionary jurisdictions, over 4,000 clergy, and 600,000 communicants (*y*).

ANGLICAN COMMUNION. By the Anglican Communion or Anglican Church is commonly meant the Church of England, and the group of Protestant Episcopal churches which take it for a model, viz., the Church of Ireland, the Protestant Episcopal churches of Scotland (*q. v.*), United States, Spain, Canada, India (*q. v.*), South Africa, Australia and other colonies. These churches are really voluntary institutions, and (except the Indian Church (*q. v.*)) are not subject to the English Ecclesiastical Courts. Their position has been laid down by Lord Kingsdown as follows: "The Church of England, in places where there is no church established by law, is in the same situation with any other religious body—in no better, but in no worse position; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their body which will be binding on those who expressly or by implication have assented to them." The organization is simply on the footing of contract (*z*). The only churches which now have any exceptional privileges as being established churches are, in England, the Church of England (Episcopal) and, in Scotland, the Church of Scotland (Presbyterian). In India (*q. v.*) and Canada there is, however, a partial establishment of both episcopalianism and presbyterianism.

(*x*) *See* ANGLICAN COMMUNION.

(*y*) A new Prayer Book has been recently issued. For further particulars, see article on American Church, by the author, in Wright & Neil's Protestant Dictionary.

(*z*) *Merriman* v. *Williams* (1882), L. R. 7 App. Cas. 502, 503; and see cases there cited.

In addition to these autonomous churches, there are several English and American missionary bishops in foreign countries. Most of the "Anglican" Churches are "lower" than the Church of England, but in the main the doctrine and discipline is the same, and the same church parties co-exist. The Bishops of the Anglican Communion now number about 250, and its nominal adherents about 25,000,000.

By the Colonial Clergy Act, 1874, clergymen ordained in Anglican Churches, other than the Churches of England and Ireland (but subject to the exceptions mentioned below), cannot officiate in England or Wales (*a*) without the written permission of the archbishop of the province, and without also making and subscribing the "declaration of assent" (*a*); and such clergyman cannot hold any preferment or curacy without the consent in writing of the bishop of the diocese (*b*). After an aggregate service of two years in a preferment or curacy, the archbishop may give him a licence (which must be registered in the provincial registry), placing him in the same position as if he had been ordained by the bishop of a diocese in England. The penalty for officiating contrary to this Act is 10*l*. for every offence, and an incumbent or curate knowingly allowing it in his church or chapel is subject to a like penalty (*c*). Aliens (*q. v.*) ordained by the Bishop of London, under 24 Geo. 3, sess. 2, c. 35, are subject to the Act (*d*). Persons ordained under 15 & 16 Vict. c. 52, which is an Act to enable Colonial and Indian bishops to ordain under commission from bishops in England or Ireland, are exempt (*e*).

The terms upon which clergymen of the Protestant Episcopal Church in Scotland are allowed to officiate in England are regulated by another Act (*f*). There seems to be no restriction upon clergymen of the Church of Ireland. It is lawful for either of the archbishops, in consecrating a

(*a*) 37 & 38 Vict. c. 77, s. 3. This only applies to a Church of England church.
(*b*) Sect. 4.
(*c*) Sect. 5.
(*d*) Sect. 9.
(*e*) Sect. 8.
(*f*) *See* SCOTLAND, PROTESTANT EPISCOPAL CHURCH OF.

bishop who is to exercise his episcopal functions elsewhere than in England, to dispense, if he think fit, with the oath of due obedience to the archbishop (*g*).

ANOINTING the sick with oil is discontinued in the Church of England. In the Greek Church it is still literally carried out in accordance with the Apostolic practice (*h*), and cases of faith-healing are still occasionally heard of. In the Roman Church the sick are only anointed when at point of death (called Extreme Unction), and this is considered by them as a sacrament (*i*).

Anointing forms part of the Coronation Service of the monarchs of England (*k*).

APOCRYPHA. The name given to a collection of sacred books written in the 400 years preceding Christ. "The Church doth read them for example of life and instruction of manners, but not to establish any doctrine" (*l*). *See* BIBLE.

APOLOGY, Bishop Jewel's, is almost one of the formularies of the Church. It is referred to in the canons, and King James commanded a copy of "Bishop Jewel's works in defence of the Church of England to be had in all churches" (*m*).

APOSTASY, a total renunciation of Christianity by embracing either a false religion or no religion at all (*n*). It was at one time punishable, at the common law of England, by burning to death (*o*). There is now no penalty unless it involves blasphemy (*q. v.*).

(*g*) 37 & 38 Vict. c. 77, s. 12.
(*h*) St. James, v. 14, 15; St. Mark, vi. 13; and see Stanley's Eastern Church, p. 35.
(*i*) See Art. 25.
(*k*) For the full form of service used at the coronation of Queen Victoria, see official form published by Eyre & Spottiswoode, 1838, and of Edward VII., 1902, George V., 1911.
(*l*) Art. 6.
(*m*) Bp. Cosin's Works, 4, 508.
(*n*) 4 Bla. Com. 43.
(*o*) Bracton, L. 3, c. 9.

APOSTOLIC SUCCESSION. All Christian ministers may be said to be successors of the Apostles, inasmuch as they are trying to do the same work; but the question which has been so much debated is, Under what circumstances do they receive a valid commission? Extremists on one side say the spiritual call is sufficient; extremists on the other, that a particular form of ordination is absolutely necessary. The Apostolic Succession may therefore be said to be of two kinds: (1) spiritual, (2) ceremonial, or "tactual." Again, this "tactual" succession may be of two kinds: (1) through a succession of bishops, or episcopal, (2) through a succession of priests, or presbyterian.

The argument of the Greek and Roman Churches is, that Christ founded a Church, and gave his Apostles power to ordain bishops with Apostolic powers in a continuous succession, and that only persons duly and episcopally ordained (*i.e.*, priests of their communions) can effectually celebrate the sacraments, so as to convey grace and forgiveness of sins (*p*). But assuming that an unbroken episcopate is an essential, it is necessary for these churches, in order to maintain their position, to prove to demonstration the Apostolical pedigree not only of their church, but of every one of their priests: for evidently, in a matter of such alleged importance, nothing can be assumed. This is most difficult, and it is still more difficult to show that there is no "grace" in other churches.

The Church of England teaches that there have been from the Apostles' time three orders of ministers—bishops, priests, and deacons (*q*); and since 1662 (when about 2,000 non-episcopal ministers were ejected) it has insisted on episcopal ordination within the limits of its own body (*r*); but it does not deny that men chosen in other ways are lawfully called to the ministry, and, in fact, from 1559 to 1662, presbyterian ministers often officiated and held dignities in the Church (*s*).

(*p*) Yet Roman Catholics admit that lay baptism is valid.
(*q*) Preface to Ordinal.
(*r*) 13 & 14 Car. 2, c. 4, ss. 13, 14.
(*s*) See 10 Cl. & Fin. p. 789.

It has, however, always been laid down that it is not lawful for a man to preach or minister the sacraments before he is "lawfully called" (*t*). What the Church of England maintains is that episcopacy is necessary to the "well-being," but not to the "being" of a church; in other words, that it is the best form of ecclesiastical polity (*u*).

The Apostolical succession of the Church of England is said to be derived through three main sources: (1) the long line of our Welsh bishops, culminating, as tradition says, in Aristobulus, one of the seventy said to have died in 67 A.D.; (2) through the bishops of Rome, ending, as tradition says, in Clemens (*x*); (3) through the Irish Church, which sent its missionaries to Iona, and thence to the north of England. But it must be admitted that all these lists of bishops are broken in the early times, and more or less apocryphal (*y*), especially the British, and there is some doubt as to the exact position and function of the bishops of those days (*z*). At any rate, the succession of our bishops is as good as that of any church of the West; but the most authentic successions of early bishops are those of the Greek Churches of Antioch (*a*) and Alexandria (*b*). There is, however (in the eyes of those who adhere to strict ecclesiastical order), a fatal flaw in the English succession (and, consequently, in English orders), inasmuch as it lacks patriarchal confirmation. Another fatal flaw from the Romish and Greek point of view, is that at the Reformation the clergy ceased to be "sacrificing priests," the ordinal being altered to suit the change of doctrine (*c*). Greek and Roman orders are everywhere admitted as "valid."

(*t*) Art. 23.

(*u*) See Bishop Lightfoot's Dissertation on the Christian Ministry, and the Bishop (Perowne) of Worcester's address at Birmingham Church Congress.

(*x*) See list in Milman's Latin Christianity, and in G. E. Tarner's Concise Tabular View of Christian History (Oxford University Press, 1891), in which lists are given of the Patriarchs and Popes of Jerusalem, Antioch, Alexandria, Rome, Constantinople, and Moscow, with dates, &c.

(*y*) See Macaulay's Essay on "Gladstone and Church and State."

(*z*) *See* BISHOP, and Dr. Hatch's Bampton Lectures.

(*a*) See list in Neale's Patriarchate of Antioch, and in Tarner, *ut sup.*

(*b*) See Le Quien, 2, 386; and Tarner, *ut sup.*

(*c*) *See* SACRIFICE.

Having, then, inherited this ancient form of church government, dissenters can hardly expect the Church to give it up, and it is difficult to see that dissenters would *lose* anything by adopting episcopacy. On the other hand, it may very fairly be retorted, Why cannot episcopal and non-episcopal ministers be allowed to hold benefices side by side within the pale of the National Church?

APPARITOR, a messenger who cites and arrests offenders and executes the decrees of the judges of the Spiritual Courts (*d*). Apparitors may not act by deputy nor take upon them the office of promoters or informers for the Court. If they become too numerous in any diocese the Archbishop of Canterbury may reduce the number (*e*). They are entitled to certain fees (*f*). There is an officer called Apparitor-General of a Province.

APPEAL. The ultimate Court of Appeal, and the sovereign authority under God in all causes relating to the Established Church of England, is the sovereign, the head or supreme governor of the Church (*g*), in whom most of the powers of a patriarch are vested. He does not hear appeals in person, but through a committee of his Privy Council, who report thereon to him. The decisions thus arrived at, it was supposed, could only be altered by Act of Parliament, as it was understood to be the rule that an ultimate Court of Appeal could not reverse its previous decisions (*h*) upon a question of law. But considerable uncertainty was introduced by certain decisions, one of which stated that an ultimate Court of Appeal "is bound to examine the reasons upon which previous decisions rest, and to give effect to their own views of the law" (*i*). The most recent case, however,

(*d*) Cowel, cit. Wharton's Law Lexicon.
(*e*) Can. 138.
(*f*) *See* FEES, and Cans. 135 and 136; and a Return of fees made in 1891.
(*g*) Art. 37, and Can. 1.
(*h*) *Beamish* v. *Beamish* (1861), 9 H. L. C. 338.
(*i*) *Read* v. *Lincoln*, [1892] L. R. A. C. 655.

clearly lays down the old doctrine that the decision of a final Court of Appeal upon a question of law is conclusive, and that nothing but an Act of Parliament can set right that which is alleged to be wrong in the judgment (*k*).

In non-established churches, *e.g.*, the Church of Ireland and the Wesleyan Church, disputes are settled according to their particular bye-laws or canons by an agreed authority, usually a synod or presbytery, though recourse to the legislature and law courts is sometimes necessary. The history of appeals in Church matters is as follows:—

In very early times all congregations, and later all bishops, were autonomous. Subsequently, the bishops of the great cities, such as Jerusalem, Antioch, Alexandria, Rome, and Constantinople, were accorded jurisdiction over the neighbouring bishops, and were given the title of Patriarch, and great unchristian struggles (which ended in schism) took place between the bishops of the two capitals, Rome and Constantinople, for the position of Universal Patriarch. The British Church formed part of the Patriarchate of Rome, and the Bishop of Rome was for centuries the head of the English clergy and the final Court of Appeal in matters ecclesiastical. But the unwarrantable interference of the Roman Curia in temporal matters led to the ultimate rupture of these relations.

Henry VIII. was the first king strong enough to carry out the desired reform; he restored to the Crown all the privileges usurped by the Pope, forbad appeals to be carried to Rome, and became in spiritual matters (as by the common law he was already supposed to be in temporal matters) head of the Church (*l*). These final appeals were then for about 300 years heard by the High Commission and the Court of Delegates, until in 1834 they were transferred to the Privy Council (*m*).

(*k*) *London Street Tramways Co.* v. *London County Council*, [1898] A. C. 381, *per* Halsbury, L. C. It appears therefore that *Read* v. *Lincoln* is *pro tanto* bad law.

(*l*) See Com. Dig. tit. Prerogative, D. 17.

(*m*) 2 & 3 Will. 4, c. 92; 3 & 4 Will. 4, c. 41; and 6 & 7 Vict. c. 38.

The hearing is regulated by the *Regulæ Generales* of 15th November, 1876 (*n*), under which one of the archbishops or the Bishop of London sits as *ex officio* assessor, and four other bishops attend as assessors. The Privy Council, being a Court of Appeal, will not, except under peculiar circumstances, decide any cause in the first instance; and where it finds that the Court below ought to have inflicted punishment, it will refer back the cause for that purpose (*o*).

The order of appeal is as follows:—From the Archdeacon's Court to the Consistory (*q. v.*) or Bishop's Court, thence to the Provincial or Archbishop's Court (*p*), and finally to the sovereign in Council.

Where an archbishop sits as, or in place of, a bishop, there is an appeal to the Provincial Court (*q*). The mode of appeal differs under various Acts of Parliament; that under the Pluralities Acts is regulated by sect. 111 of the Act of 1838, and security for costs may be exacted. Under this Act an appeal cannot be carried beyond the archbishop, except in one solitary instance, namely, the refusal of the archbishop to grant a dispensation to hold two livings (*r*). Under the Clergy Discipline Act, 1892 (*q. v.*), there is an appeal from the Consistory to either the Provincial Court or the Privy Council. Under the Benefices Act, 1898, appeals are heard by a Court of Record constituted under the Act consisting of the archbishop of the province and a judge of the Supreme Court (*s*).

APPROPRIATIONS. (*See* VICAR.)

ARCHBISHOP. The title seems to have come into vogue about A.D. 400 to denote the chief ecclesiastic of a province

(*n*) L. R. 2 P. D. 384.

(*o*) *Martin* v. *Mackonochie* (1882), L. R. 7 P. D. 94.

(*p*) *See* ARCHES. As to costs of appeal, see *O'Malley* v. *Norwich*, [1892] P. 175. There is no appeal from the Arches Court to the Upper House of Convocation: *Gorham case* (1850), 15 Q. B. 69.

(*q*) *Reg.* v. *Dodson* (1857), 7 E. & B. 317.

(*r*) 1 & 2 Vict. c. 106, s. 6; *Poole* v. *Bishop of London* (1861), 14 Moo. P. C. 288. *But see* RESIDENCE.

(*s*) 61 & 62 Vict. c. 48, s. 3.

in the Roman Empire. There are now two provinces in England, Canterbury and York (*t*); but in the primitive Church there were three, viz., London, York, and Caerleon (afterwards transferred to St. David's) (*u*). These three sees have been presided over by bishops and archbishops from very early (probably apostolical) times, but Canterbury only dates from about 600 A.D., when it was founded by the Italian missionary Augustin, and it did not obtain the primacy of England till much later, nor the primacy of Wales till about 1147 A.D., when the archbishopric of St. David's was amalgamated with that of Canterbury. St. David's will eventually, no doubt, be restored to its ancient dignity. Lichfield was for a few years in the eighth century the seat of an archbishopric.

The Province of Canterbury comprises altogether 27 dioceses, viz., 23 English dioceses—Canterbury, London, Winchester, Bath and Wells, Birmingham, Bristol (*x*), Chichester, Ely, Exeter, Gloucester, Hereford, Lichfield, Lincoln, Norwich, Oxford, Peterborough, Rochester, St. Alban's, Salisbury, Southwark, Southwell, Truro, Worcester—and the four Welsh dioceses, St. David's, Bangor, Llandaff, and St. Asaph. The province of York comprises the 10 dioceses of York, Durham, Carlisle, Chester, Liverpool, Manchester, Newcastle, Ripon, Sodor and Man, and Wakefield (*y*).

An archbishop is that minister of the Word who within the province whereof he is archbishop has, next and immediately under the king, supreme power, authority and jurisdiction in all causes and things ecclesiastical (*z*).

There are two ancient archbishopries of the Church of Ireland (now disestablished), viz., Armagh and Dublin, and

(*t*) Co. Litt. 94 a.

(*u*) See Calendar in Prayer Book, "David, Archbishop," also Roger of Wendover, and Matthew of Westminster.

(*x*) Bristol was for a long time united to Gloucester, separated 1897.

(*y*) As to boundaries and transfer of Chester and Man from Canterbury to York and Nottingham county from York to Canterbury, see 33 Hen. 8, c. 31; 6 & 7 Will. 4, c. 77, and Co. Litt. 94 a.

(*z*) Godolphin, Repertorium Canonicum, 12; Art. 23, 27.

recently some of the leading colonial bishops have taken the style of archbishop.

Up to the year 1470, the jurisdiction of the Archbishop of York extended over part of Scotland.

The duties and privileges of an archbishop over and above those of a bishop are to *visit, i.e.*, inspect the bishops and the inferior clergy of his province, and to deprive them on notorious cause; to confirm the election of bishops; to consecrate bishops (though this may be done by bishops); to call meetings of Convocation, upon receipt of the sovereign's writ, but not without; to hear appeals from the bishops; when a see is vacant to provide for the ecclesiastical administration of the diocese; to present by lapse to livings if the bishop neglects to do so for six months; on the appointment of a new bishop to nominate a chaplain for him, which was formerly commutable by the gift of an "*option*" (*i.e.*, the next presentation to such benefice in the bishop's gift as the archbishop should choose) (*t*).

An archbishop sitting alone has jurisdiction to try a bishop for offences against the laws ecclesiastical, and to deprive him; and if he refuses to cite a bishop in respect of such offences, an appeal from such refusal lies to his Majesty in Council (*u*).

The peculiar privileges of the Archbishop of Canterbury are:—To crown the kings and queens of England, to grant certain licences (*q. v.*), or dispensations (*q. v.*), and to confer university degrees (*x*). The Archbishop of York has claimed to have the privilege of crowning the queen consort (*y*) and to be her chaplain, but the decision was adverse. The two archbishops are otherwise quite independent of each other, and are of equal and co-ordinate authority, and alike subject to

(*t*) 1 Bla. Com. 380, 381. Options were abolished in 1840 by 3 & 4 Vict. c. 113, s. 42.

(*u*) *Bishop of St. David's case* (1698), Carthew, 485; *Ex parte Read* (1888), L. R. 13 P. D. 221.

(*x*) 1 Bla. Com. 381. *See* LAMBETH DEGREES.

(*y*) See cases in Edward VII.'s Court of Claims, Wollaston, p. 148; and decision at coronation of George V. The secular authority of the Archbishop of York was taken away in 1836 (6 & 7 Will. 4, c. 87).

the Crown. The legal decisions of the Archbishop of Canterbury are therefore not binding on the Province of York (*z*).

An English archbishop is addressed as "his Grace," and "Most Reverend," "by Divine Providence" or "Divine Permission" (*a*), and ranks before dukes in the English order of precedence. The Archbishop of Canterbury, who is styled Primate of all England, is placed immediately after the Royal Family, the Lord Chancellor next, and then the Archbishop of York (Primate of England). The Archbishops of Armagh (Primate of all Ireland) and Dublin (Primate of Ireland) used to have precedence next after the Archbishop of York; but the Irish prelates, who have been consecrated since the disestablishment of their Church in 1871, have no precedence in England and Scotland, but they have in Ireland, concurrently with the Presbyterian Moderator and the Roman Catholic archbishops, under special rules approved by her late Majesty Queen Victoria (*b*). In Scotland, only the Moderator has precedence and ranks before dukes (*c*). In England and Scotland respectively ecclesiastical titles assumed by ministers of religion not belonging to the established Churches of England or Scotland are not recognized by law, and give no precedence to the holders (*d*); *e.g.*, the President of the Wesleyan Conference, the Roman Catholic and Free Church archbishops and bishops have no civil rank as such. Formerly, penalties attached to the assumption by a dissenting minister of an ecclesiastical title as of a particular city, place, or territory, but the Act has been repealed (*e*).

The Archbishop of Canterbury now receives a fixed stipend of 15,000*l*. a year in lieu of his ancient revenues,

(*z*) *See* APPEAL; and for the history of the struggle for precedence between the two Archbishops, see Makower, Cons. Hist. of the C. of E. 281.

(*a*) See *London Gazette*, 1908, Vol. II. 9741.

(*b*) Burke, Peerage, 1909, pp. 2410, 2416. *See* IRELAND, CHURCH OF.

(*c*) Burke, 2414. *See* SCOTLAND.

(*d*) 34 & 35 Vict. c. 53.

(*e*) 14 & 15 Vict. c. 60; 34 & 35 Vict. c. 53.

and the Archbishop of York 10,000*l.* a year (*f*), in addition to official residences.

An English archbishop is elected in the same way as a bishop (*q. v.*). The election has to be signified to the other archbishop and two bishops, or to four bishops, requiring them to confirm, invest, and consecrate the person so elected (*g*). He can only be deprived by the sovereign (*h*), and his resignation must be made to the sovereign (*i*). An archbishopric also becomes vacant by death or translation (*k*).

An archbishop has his own diocese wherein he exercises episcopal jurisdiction, as in his province he exercises archiepiscopal; and during the vacancy of such see the dean and chapter are the spiritual guardians (*l*).

The vestments of an archbishop at Prayer Book services are the same as those of a bishop: the rochet, chimere, and hood (*m*).

ARCHDEACON. Originally, this office was limited to deacons, but now a clergyman is not qualified for it unless he has been six years in priest's orders (*n*) and consequently thirty years of age.

By the common law, the archdeacon is in all things the bishop's viceregent; by the canon law, he is styled "the bishop's eye." He is usually appointed by the bishop himself, and has a kind of episcopal authority originally derived from the bishop, but now independent of and distinct from his. His duties are:—to hold visitations of parochial clergy (when the bishop is not there); examine candidates for ordination; institute, induct, excommunicate, inspect and reform abuses among the clergy, and has special jurisdiction

(*f*) 6 & 7 Will. 4, c. 77; 23 & 24 Vict. c. 124. *And see* BISHOP.
(*g*) 1 Bla. Com. 380.
(*h*) *Ibid.* 382.
(*i*) For form, see *London Gazette*, 1908, Vol. II. 9741.
(*k*) *Evans* v. *Askwith* (1627), W. Jones, 158, 160, 162.
(*l*) 1 Bla. Com. 380.
(*m*) By ancient and continuous post-Reformation custom. There is no authority for the archiepiscopal cross.
(*n*) 3 & 4 Vict. c. 113, s. 27.

by statute over parish clerks (*q. v.*). He can, either in person or by his official, hold a court, which in most cases has concurrent jurisdiction with the bishop's, in subordination to him (*o*). With respect to matters coming within the Pluralities Act, 1838, it would seem that he has no concurrent jurisdiction (*p*). In most cases, an archdeaconry is a division of a diocese only, though it may be the whole, and formerly, it is said, there was an official called the archdeacon-general for the whole diocese (*q*). The division into archdeaconries arose in the feudal times. They can be re-arranged or new ones created on the recommendation of the Ecclesiastical Commissioners with the consent of the bishop (*r*).

An archdeacon is styled "the Venerable" (*s*). The income of an archdeaconry is small, so another benefice is usually held with it (*t*). The Ecclesiastical Commissioners have power to raise the income of any archdeaconry to 200*l*. per annum (*u*).

An archdeacon must reside in the diocese for eight months in every year, unless he has a licence (*x*). He is entitled to a seat in the lower House of Convocation.

ARCHES, Court of, is now the name of the provincial Court of the Archbishop of Canterbury, and its judge or official principal came to be called the Dean of Arches because, in ancient times, the two offices were frequently held together. The real Dean of Arches had jurisdiction over thirteen peculiars (now abolished) of the Archbishop of Canterbury in the city of London, and was so called from the Arches of Bow Church (*S. Maria de arcubus*), where he held his Court. His office is now obsolete (*y*). The official

(*o*) 2 Ste. Com. 689.
(*p*) 1 & 2 Vict. c. 106, s. 109.
(*q*) 1 Bla. Com. 383.
(*r*) 3 & 4 Vict. c. 113, s. 32; 37 & 38 Vict. c. 63, s. 1.
(*s*) As to his relative dignity, *see* DEAN.
(*t*) *See* PLURALITIES.
(*u*) 48 & 49 Vict. c. 55.
(*x*) 3 & 4 Vict. c. 113, s. 34. *And see* RESIDENCE.
(*y*) Judgment of Manisty, J., L. R. 6 Q. B. D. 413.

principal hears appeals from the Consistory Courts (*q. v.*) of the province of Canterbury, just as the official principal of the Archbishop of York does in that province, and from either an appeal lies to the sovereign as supreme head of the Church. He also hears cases in the first instance by virtue of letters of request (*z*). The office in both provinces is now to be held by one judge (*a*), who is to be appointed by the two archbishops, subject to the approval of the King, or in default by the King. Such judge must be a barrister who has been in actual practice for ten years, or a retired judge of the Supreme Court. He must be a member of the Church of England. All cases can be heard in London or Westminster, but judgments relating to the province of York are to be pronounced and issued in the Court at York as heretofore (*b*). It has been held in the King's Bench Division and in the Court of Appeal that such judge is not the judge of a new Court, but is the official principal of the old provincial Courts, and has all the old powers of those Courts, including the power of signifying for contempt if his orders are disobeyed, and an inhibition issued by him under the Public Worship Regulation Act can be enforced by *significavit* under 53 Geo. 3, c. 127 (*c*). The Court of Arches is unquestionably bound to respect and follow in regard to any matter which may come before it the direct ruling thereon of the Judicial Committee of the Privy Council (*d*).

The archbishops have also power to sit in person. Both from the archbishop in person and the official principal, appeals lie to the King in Council, except in certain cases, as to which see APPEAL.

ARMY CHAPLAINS. By the Army Chaplains Act, 1868, an army chaplain is, for the purposes of the Act,

(*z*) See Church Discipline Acts and *Nesbitt* v. *Wallace*, [1901] P. 354.

(*a*) P. W. R. A. 1874, s. 7. Lord Penzance is now the judge of both Courts.

(*b*) Rules of the Chancery Court at York (1886); 11 P. D. 186; *Noble* v. *Ahier* (1886), 11 P. D. 158; Rules of the Arches Court, Sept. 1903.

(*c*) *Dale's case* (1881), 6 Q. B. D. 376.

(*d*) *Per* Sir A. Charles, Dean of Arches, [1901] P. 212.

defined to be a commissioned chaplain in holy orders of the (then united) Church of England and Ireland (*e*), and the Act does not apply to Church of Scotland chaplains. It provides that the King in Council, with the consent of the bishop, may mark out the bounds of any camp, barrack, hospital, or arsenal, and declare the same to be for the purposes of the Act an extra-parochial district, but an opportunity must be afforded to the incumbent or patron of objecting thereto (*f*). A Secretary of State may appoint any army chaplain to be the chaplain of such extra-parochial place (*g*). The chapel of such district, when consecrated, is for all ecclesiastical purposes to be an extra-parochial chapel (*h*), or a building may be used as an unconsecrated chapel (*i*). The King in Council may place such districts under the exclusive jurisdiction of an archbishop or bishop, who may exercise over the officiating army chaplains all the authority which he can exercise over the clergy holding any preferment within his diocese (*k*). The immediate control of the army chaplains is, however, vested in the Chaplain-General of the Forces. "Instructions for the guidance of Chaplains of the Church of England" are issued. Officers in command are to see that divine service is properly performed in accordance with these "Instructions," and are to bring to notice any deviations therefrom. They must also report any improper conduct on the part of chaplains (*l*).

When a civilian clergyman is desirous of officiating, leave must be obtained from the War Office through the officer commanding the troops at the station, and, unless such leave is obtained, no payment can be guaranteed to him (*m*).

As in the navy, complete liberty of worship is allowed, and now dissenting chaplains (including Romish) are commissioned and paid. Formerly, the only paid chaplains

(*e*) 31 & 32 Vict. c. 83, s. 2.
(*f*) Sects. 4 and 5.
(*g*) Sect. 6.
(*h*) Sect. 7.
(*i*) Sect. 8.
(*k*) Sect. 9.
(*l*) See King's Regulations, 1908, pars. 1320–7.
(*m*) *Ibid.* pars. 1328–31.

were those of the Established Churches of England, Ireland, and Scotland (*n*).

ARTICLES OF RELIGION, usually known as the Thirty-nine Articles, were (after many alterations) finally settled in their present form in the year 1571. They are part of the statute law (*o*). They incorporate the homilies (*q. v.*), and together with them and the Prayer Book form a standard of orthodoxy. The stringent subscription to the Articles formerly required is now done away with, and a "declaration of assent" substituted (*p*). But although this certainly gives a clergyman greater latitude of private opinion, it does not seem clear to what extent. If the change means anything, and it was intended to have a meaning, it would seem to allow a clergyman to *hold* private views inconsistent with as many or as few of the Articles as he pleases, provided he does not *teach* them, and it would seem to follow that he cannot be forced to teach those doctrines with which he disagrees. Before the change it was held that it was clearly a minister's duty—an engagement which he enters into at the time of his ordination—"with all faithful diligence to banish and drive away *all* erroneous doctrines," meaning, of course, all doctrines repugnant to the Articles.

The 13 Eliz. c. 12, s. 2, is, however, still in force, and positively forbids the promulgation of any doctrine contrary or repugnant to the plain grammatical sense of the Articles; and unless a clergyman convicted under the statute expressly and unreservedly revoke his errors, the Court has no discretion, but must pronounce sentence of deprivation (*q*). In investigating charges under the statute, the Privy Council has laid down the following rules:—(1) The Court must look solely to the statute and the Thirty-nine Articles; (2) No discussion can be allowed as to whether the Articles

(*n*) See Clode, Military Forces of the Crown, Vol. II. p. 385.

(*o*) 13 Eliz. c. 12. See *post*.

(*p*) *See* OATH.

(*q*) If the proceedings are taken under the general ecclesiastical law, it would seem the lighter punishment of suspension may be inflicted.

are or are not in conformity with Holy Scripture; (3) It is immaterial how the doctrines are promulgated, by preaching, or publishing in a book, or otherwise, so long as it is the deliberate act of the party, not a casual expression dropped "unadvisedly" (*r*); (4) Where there is any vagueness in an article, the accused must be allowed a reasonable latitude of opinion; (5) The Court is not compelled to affix a definite meaning to any article (*s*).

As to what amounts to a sufficient revocation within the statute is dealt with in the cases of *The Procurator-General* v. *Stone* (1808) (*t*), and *Heath* v. *Burder* (1862) (*u*), in which it is said that a statement which amounts to a mere promise of *future* silence, but no *revocation* of *past* error, is not sufficient, nor is a mere expression of regret. There must be formal revocation; but it may be doubted whether this would be held to be correct since the alteration in the mode of assent.

The following are the most important cases which have been decided on the construction of the Articles:—

In *Breeks* v. *Woolfrey* (1838) (*x*), it was held that prayers for the dead do not necessarily constitute a part of the doctrine of purgatory, and therefore do *not* contravene Article 22 or the Homily on Prayer (*y*). This case was distinguished in *Egerton* v. *All of Odd Rode*, Chancellor Espin refusing to sanction an inscription "Of your charity pray for the soul of H. F." (*z*), and also in *Stead* v. *Pearson*, by Chancellor Tristram (*a*). It has, moreover, been held over and over again in the English Law Courts that prayers for the dead are "superstitious" under 1 Edw. 6, c. 14, and gifts for them void on that ground (*b*). In *Elphinstone* v. *Purchas* (1870) (*c*), it was held that the insertion of a prayer

(*r*) *Heath* v. *Burder* (1862), 8 Jur. N. S. 597; 15 Moo. P. C. 1.
(*s*) *Voysey* v. *Noble* (1871), 3 L. R. P. C. 357; *Hodgson* v. *Oakeley* (1845), 1 Robertson, 322.
(*t*) 1 Hagg. Cons. 424.
(*u*) 15 Moo. P. C. 1; 8 Jur. N. S. 597.
(*x*) 1 Curteis, 880.
(*y*) Cf. "Essays and Reviews" cases, *post*.
(*z*) [1894] P. 15. *See* MONUMENTS; PRAYERS FOR THE DEAD.
(*a*) [1903] P. 66.
(*b*) *See* CHARITIES.
(*c*) L. R. 3 A. & E. 98.

for a deceased person into the Communion Service was illegal, but apparently because it was an additional rite. Also that it was illegal to give notice that next day there would be "a mortuary celebration for the repose of a sister." The prayers for the deceased in the Burial Service which were contained in the 1st Edwardian Prayer Book have been omitted in all subsequent editions.

In *Hodgson* v. *Oakeley* (1845) (*d*), it was held that to maintain *all* Roman doctrine necessarily contravenes the Articles, and therefore no particular article need be specified.

In the *Gorham* case (1850), it was held that regeneration does not necessarily accompany the sacrament of baptism. See further as to this under BAPTISM.

In *Heath* v. *Burder* (1862) (*e*), it was held to be contradictory to Article 11 to explain justification to be "by the faith of Jesus himself," and not by our faith in Jesus.

Also Articles 2 and 31 are contravened by a statement that "God is propitiated by Christ, but Christ's blood has long ago been poured out not to propitiate His kind and benevolent Father, but to bring men to His Father again." Also by rejecting as darkening and confusing the expressions "guilt of sin," "satisfaction."

Also Articles 8, 16, and 27 are contravened by a statement that "forgiveness of sins has nothing to do with the Gospel," although it is admitted that there is "remission" of sins.

On the other hand, it is allowable to reject the phrases "going to heaven," "going to hell," "immortality of the soul," as such rejection does not necessarily dispute the doctrine of everlasting life as it appears in the creeds.

In the "*Essays and Reviews*" cases (1863) (*f*) it was held that on matters of doctrine on which the Church has prescribed no rule, there is so far freedom of opinion that they may be discussed without penal consequences. It is allow-

(*d*) *Ubi sup.*
(*e*) *Ubi sup.*
(*f*) *Williams* v. *Salisbury* and *Wilson* v. *Fendall*, 2 Moore, P. C. N. S. 375.

able to say that the Bible is an "expression of devout reason," and "the written voice of the congregation," when coupled with such words as the following as to the Holy Spirit, "If such a spirit did not dwell in the Church the Bible would not be inspired." "The sacred writers acknowledge themselves men of like passions with ourselves, and we are promised illumination from the spirit which dwelt in them." It must not be taken that such phraseology denies the Bible to be the word of God (*g*).

Article 11 is silent as to the merits of Jesus Christ being transferred to us; therefore it is not penal to speak of merit by transfer as a "fiction," however unseemly the word may be (*h*).

Although Article 6 says that "Holy Scripture containeth all things necessary to salvation," it does *not* say that *every* part of Holy Scripture is inspired. This latter proposition is not to be found in any formulary of the Church, and it is allowable to deny it (*i*).

As to the future life, the following passages are not contrary to Church doctrine:—"We must rather entertain a hope that there shall be found after the great adjudication receptacles suitable for those who shall be infants, not as to years of terrestrial life, but as to spiritual development . . . . . nurseries, as it were, ... where the stunted may become strong and the perverted be restored. . . . . And when the Christian Church in all its branches shall have fulfilled its sublunary office, and its founder shall have surrendered his kingdom to the Great Father—all, both small and great, shall find a refuge in the bosom of the Universal Parent, to repose, or be quickened into higher life, in the ages to come, according to His will." As to this, the Court said that the passages contained no denial that at the end of the world there will be a judgment. And after referring to the Apostles' and Nicene Creeds, the Absolution, Burial

(*g*) *Ibid.* pp. 425—427. (*h*) 2 Moo. P. C. N. S. p. 428.
(*i*) *Ibid.* p. 430.

Service, Catechism, Commination Service, and Athanasian Creed, their lordships said that they did not find in these formularies any such distinct declaration of our Church, as to the eternity of final punishment, as to require them to condemn as penal the expression of hope by a clergyman that even the ultimate pardon of the wicked who are condemned in the day of judgment may be consistent with the will of Almighty God (*k*).

It will be observed that all the above cases were decided before the year 1865, when the change was made in terms of the subscription to the Articles.

The case of *Sheppard* v. *Bennett* (1871) (*l*) decided that the following statements contravened the Articles, viz.:—"That there is a real, actual, and visible presence of the Lord upon the altars of our churches"; "who myself adore, and teach the people to adore, the consecrated elements, believing Christ to be in them—believing that under their veil is the sacred body and blood of our Lord and Saviour Jesus Christ."

The following, however, though "rash and ill-judged, and perilously near a violation of the law," do *not* sufficiently contravene the Articles as to render them penal:—(1) "In the sacrament of the Lord's Supper there is an actual (*spiritual*) presence of the true (*spiritual*) body and blood of our Lord in the consecrated bread and wine, by virtue of, and upon the consecration, without or external to the communicant, irrespective of the faith and worthiness of the communicant, and separately from the act of reception by the communicant; (2) that the communion table is an altar of sacrifice at which the priest appears in a sacerdotal position at the celebration of the Holy Communion, and that at such celebration there is a great sacrifice or offering of our Lord by the ministering priest, in which the mediation of our Lord ascends from the altar to plead for the sins of men"; (3) "adoration is due to Christ (*spiritually*) present

(*k*) 2 Moo. P. C. N. S. p. 433. (*l*) L. R. 4 P. C. 371.

upon the altar . . . . in the sacrament, under the form of bread and wine, on the ground that under their veil is the (*spiritual*) body and blood of our Lord."

In order to make statements (1) and (3) legal, the word *spiritual* must be understood, as it is unlawful in terms to allege a *corporal* presence of the *natural* body of Christ in the elements, or that the body of Christ is present in a *corporal* or *natural* manner. (*See* PRESENCE.) As to the doctrine maintained in statement (2), the Church of England has deliberately ceased to teach or affirm it, and in order to escape punishment for its use, "altar" must be explained to mean the "table at which communicants partake of the Lord's Supper" (*see* LORD'S TABLE), and "sacrifice" (and "offering") has to be construed not in its primary sense, but in its secondary meaning of a "rite which calls to remembrance and represents before God that one true sacrifice." Even in this sense the word "may be liable to abuse and misapprehension." (*See* SACRIFICE.)

In *Voysey* v. *Noble* (1870), it was held that it is not competent for any clergyman of his own mere will, not founding himself upon any critical inquiry, but simply upon his own taste and judgment, to assert that whole passages of some of the canonical books are without any authority whatever, as being contrary to the teaching of Christ as contained in others of the canonical books (*m*).

The following passages (*n*) were held contradictory to the Articles:—"He (the Saviour) never hinted at such a doctrine as that of the fall of man, or the atonement by sacrifice, or justification by faith. He never taught that men needed to be accounted righteous before God, or needed any mediator to propitiate His wrath, or to draw them to Himself. All these notions were Jewish, and Christ never gave any sanction or encouragement to them that I have been able to discover." "To us, God is a father, and we are His children; and if this be true, it sweeps away the dusty cobwebs of

(*m*) **L. R. 3 P. C. 357.** (*n*) *Ibid.* pp. 388 *et seq.*

mediation, intercession, sacramental sacrifice, and all the sacred and consecrated follies which grow out of it. We want neither altar nor sacrifice, neither victim nor priest, no sprinkling of blood, or fumes of burning incense, to render our approach to the mercy seat of God more reverent or more successful." "Sincere sorrow for sin is, or ought to be, enough to make a man quite reconciled and at peace with God; at least, so our Lord teaches. We do not therefore *need* any atonement or justification. We need no atonement, for God requires none."

"The very idea of Incarnation itself, which means Deity coming from heaven and dwelling in an individual man for some years, implies a belief that God does not, nor never did, dwell in the hearts of all men. This belief, and a belief in other miracles, are not peculiar to Christianity; they are common to all the religions of the world. The Brahmins have their nine incarnations of Vishnu, which, in their way, are splendid conceptions of Divine love and sympathy."

"The revelation of the knowledge of God by means of any book is impossible; all true knowledge of God comes directly from the law of God written in men's hearts."

BALDACHINO, or Baldaquin, a canopy over the Lord's table (*q. v.*), illegal in the Church of England (*o*).

BANKRUPTCY. A clergyman may be made a bankrupt in the same way as a layman (*p*), but the tithes and other emoluments of the benefice do not vest in the trustee in bankruptcy. He has to proceed by sequestration, as to which there are special rules in the Bankruptcy Act, 1883 (*q*). A pension under the Incumbents' Resignation Act, 1871, also does not vest in the trustee (*r*); but a pension or annuity under the Union of Benefices Act, 1850, does (*s*), as also the

(*o*) *White* v. *Bowron* (1873), L. R. 4 A. & E. 207.

(*p*) As to what are acts of bankruptcy, and generally, see Bankruptcy Acts, 1883 and 1890; and Robson on Bankruptcy.

(*q*) *See* Sequestration.

(*r*) *See* Resignation.

(*s*) 23 & 24 Vict. c. 142; *McBean* v. *Deane* (1885), 30 Ch. D. 520.

salary of a chaplain paid out of local or private funds, *e.g.*, a workhouse chaplain (*t*). An advowson or next presentation vests in the trustee, and such vesting is not a "transfer" under the Benefices Act, 1898 (*u*), but a sale by the trustee must be subject to the provisions of that Act and to the rules against simony (*q. v.*). If a vacancy occurs before the sale, the bankrupt is entitled to present. The rights and position of a bankrupt incumbent who has not been suspended or inhibited, remain unaltered except so far as they are expressly interfered with by statute, thus he may, after sequestration, appoint to the office of parish clerk (*x*). As to discharge, *see* SEQUESTRATION.

BANNS of marriage originated about A.D. 1215, the time when marriage began to be insisted upon as a sacrament of the Romish Church. By the Marriage Act of 1824, all banns are to be published in an audible manner in the parish church, or in some public chapel in which banns are allowed to be published belonging to the parish or chapelry in which the persons to be married dwell, according to the form prescribed by the rubric, upon three Sundays preceding the solemnization, during the time of morning service, or of evening service (if there shall be no morning service), immediately after the second lesson (*y*). Where the persons to be married dwell in different parishes or chapelries, the banns must be published in both parishes or chapelries (*y*). All the rules prescribed by the rubric as altered by this Act are to be observed (*z*); but in the case where one of the parties resides in England and the other in Scotland, the incumbent can now accept a certificate that banns have been duly published in the church of the parish or place in Scotland in which one of the parties to be married was at the time resident, according to the law or custom prevailing in Scot-

(*t*) *Re Mirams*, [1891] 1 Q. B. 594.
(*u*) 61 & 62 Vict. c. 48, s. 1 (6).
(*x*) *Lawrence* v. *Edwards*, [1891] 1 Ch. 144.
(*y*) 4 Geo. 4, c. 76, s. 2. And see 1 Vict. c. 22, s. 34. Banns may, in certain cases, also be published on board His Majesty's ships: 8 Edw. 7, c. 26.
(*z*) *Ibid.* *And see* MARRIAGE.

land, although not in the manner required for the publication of banns in England (*a*). In all cases where banns have been published, the marriage must be solemnized in one of the churches or chapels in which the banns have been published (*b*). No minister is *obliged* to publish banns without seven days' written notice from the persons to be married. Such notice must be dated on the day on which it is delivered, and must contain their true Christian and surnames, their abode and length of residence (*c*). A minister runs a certain risk by omitting to take the proper notice (*d*). The banns must be entered in a proper book, from which, and not from loose papers, they must be published, and after publication, must be signed by the minister publishing, or by some person under his direction (*e*). Banns are good for three calendar months after complete publication (*f*). When the church is pulled down, or rebuilding, or under repair, the bishop may direct banns to be published and marriages to be solemnized "in any consecrated chapel of such parish or place which he shall by order in writing direct;" and the fees in respect thereof are to be applied as the bishop, with the incumbent's consent, shall direct (*g*).

The banns must be *duly* published (*h*). This is not done if wrong names are wilfully given and the fact is known to both parties (*i*). The banns may be forbidden for any just cause or impediment either by notice to the minister or publicly in church when the banns are published. In the case of a minor, the publication of banns publicly forbidden by parents or guardians or by their direction is absolutely void (*k*). (*See* MARRIAGE.)

BAPTISM, Holy, is one of the two sacraments of the Church of England (*l*). It was originally performed by com-

(*a*) 49 Vict. c. 3.
(*b*) 4 Geo. 4, c. 76, s. 2. *And see* MARRIAGE.
(*c*) 4 Geo. 4, c. 76, s. 7.
(*d*) 16 Ves. 259.
(*e*) Sect. 6.
(*f*) Sect. 9.
(*g*) 11 Geo. 4 & 1 Will. 4, c. 18, s. 2.
(*h*) 4 Geo. 4, c. 76, s. 22.
(*i*) *Tongue* v. *Tongue* (1836), 1 Moo. P. C. 90; *Gomperz* v. *Kensit* (1872), L. R. 13 Eq. 369.
(*k*) 4 Geo. 4, c. 76, s. 8.
(*l*) Arts. 25 and 27. *And see* SACRAMENT.

plete immersion in rivers or baptisteries (as practised by the Eastern Church (*m*) and by the Protestant sect of Baptists now). By our rubric an infant is to be dipped in the water if it can well endure it, but if it is weak it suffices to pour water upon it. An adult may either be dipped or have water poured upon him at the minister's discretion (*n*). The font must be of stone and set in the ancient usual place, *i.e.*, just inside the door of the church, "in which only font the minister shall baptize publicly" (*o*). The proper time for baptism is on Sundays or holidays, when the most number of people come together, that is, immediately after the last lesson at morning or evening prayer (*p*). This practice is rarely observed in the Church, but many dissenters adhere to it. If necessity so require, children (but not those of riper years) may be baptized on any day (*q*). Baptism by a layman or by a woman, by a schismatic or heretic (1) with water, and (2) "In the name of the Father, the Son, and the Holy Ghost" is valid and must not be repeated, and no inquiry must be made into the necessity for such lay baptism, only as to whether the two essentials were observed, and only reasonable evidence of the fact can be required. This rule as to the validity of lay baptism is not affected by the rubric in the order for private baptism, which refers to the "lawful minister" only (*r*). If there is any doubt as to due baptism, the minister re-baptizes conditionally, saying, "If thou art not already baptized," &c. The sign of the cross is no part of the substance of the sacrament (*s*), as when the two essentials have been observed the person is fully and perfectly baptized, but it must be used by ministers in public baptisms. Although lay baptism is valid people should not, without great cause or necessity, procure their children to be baptized at home in their houses, and even

(*m*) Stanley's Eastern Church, p. 34.
(*n*) Rubric.
(*o*) Canon 81.
(*p*) Rubric.
(*q*) *See* RUBRIC.
(*r*) *Escott* v. *Mastin* (1842), 4 Moo. P. C. 104; *Titchmarsh* v. *Chapman* (1844), 3 Curt. 840.
(*s*) See Can. 30.

then the services of a minister should be obtained (*t*). A minister refusing or neglecting to baptize a child, will, if the child dies unbaptized, be liable to suspension for three months (*u*). The Greek and Roman Churches, and nearly all Christians, observe the two essentials, except that some Unitarians use an alternative form of words:—"I baptize thee in the name of Jesus Christ" (*x*).

Lunatics and dumb persons may be baptized.

For every male child to be baptized in public there must be two godfathers and one godmother, and for every female one godfather and two godmothers (*y*). Parents, or persons who have never communicated, cannot be sponsors (*z*); but the law on this point is frequently ignored.

The name to be given must be decent (*a*), and any name given at baptism might formerly have been changed at confirmation (*b*). Dr. Burn doubted whether this could be done (*c*); but apart from church regulations, there seems to be nothing to prevent a person changing his name or names or those of his infant children at any time (*d*).

Fees. Since 18th July, 1872, it has been unlawful for the minister, clerk in orders, parish clerk, vestry clerk, warden, or any other person to demand any fee or reward for the celebration of the sacrament of baptism or for the registry thereof, but the Act does not apply to the then holder of any office who was then entitled by any Act of Parliament to demand such fees (*e*). The acceptance of a fee, unless due by statute, involves simony. By the canon law also, a minister may not refuse the sacrament because he has not been paid his legal fee (*f*).

(*t*) Office for Private Baptism.

(*u*) Can. 69.

(*x*) See Common Prayer for Christian Worship, 1878, Whitfield, Strand.

(*y*) Rubric. In the Church of Ireland one sponsor is sufficient.

(*z*) Can. 29. In 1865 an attempt was made by convocation to alter this, but an Act of Parliament would appear to be necessary; the rule being ancient and customary.

(*a*) It has been said from the bench that a Christian name may consist of a single letter. Wharton's Law Lex.

(*b*) Co. Litt. 3a.

(*c*) 2 Burn, 11.

(*d*) See 2 Court of Sessions Cases, 5th Series, 75, 127, and Law Journal, 28th July, 1900. As to altering register, see 37 & 38 Vict. c. 88, s. 8.

(*e*) 35 & 36 Vict. c. 36.

(*f*) See Can. 68.

Registers (*q. v.*) of baptisms are still to be kept, and the incumbent must on demand give a certificate in a statutory form, for which a fee not exceeding 1*s.* is chargeable (*g*).

Doctrine. The various views permitted in the Church of England may be gathered from Articles 9 and 27, the baptismal services, the catechism, and the *Gorham case,* where it was decided by the highest authority (her Majesty in Council), that the following doctrines are not contrary or repugnant to the doctrine of the Church of England:—"That baptism is a sacrament generally necessary to salvation, but that the grace of regeneration does not so necessarily accompany the act of baptism that regeneration invariably takes place in baptism; that the grace may be granted before, in, or after baptism; that baptism is an effectual sign of grace by which God works invisibly in us, but only in such as worthily receive it, in them alone it has a wholesome effect; and that without reference to the qualification of the recipient, it is not in itself an effectual sign of grace; that infants baptized and dying before actual sin are certainly saved, but that in no case is regeneration in baptism unconditional" (*h*).

Among Protestant Dissenters baptism is looked upon as mere outward form of admission into the visible Church, which, of course, may be accompanied by spiritual regeneration, and it is difficult to distinguish between this and the Gorham doctrine. The Greek and Roman Churches hold that baptism entirely destroys sin, both actual and original, even when the sacrament is administered by a layman, but not necessarily when administered by a heretic.

BEADLE is chosen by the vestry. His duties are to attend upon the vestry, give notice of its meetings, execute its orders, attend upon inquests, and assist the constables, churchwardens, and overseers. His office is held only at the pleasure of the vestry (*i*). So far as his duties are eccle-

(*g*) 37 & 38 Vict. c. 88, s. 8, Form in 1st Sched.

(*h*) (1850), 14 Jurist, 443; 15 Q. B. 69. And see Rubric at end of Office for Private Baptism.

(*i*) Steer's Parish Law, p. 126.

siastical he must be paid out of church funds, in new parishes out of pew rents (*k*).

BELL. There must be *one* bell in a church, to ring the people to service and to toll at funerals. A peal of bells is not necessary (*l*). One short peal should be rung before, and one other after, a burial (*m*). The bells should only be rung with the minister's consent, and they must not be rung against his express wish, or at all on holy days or eves abrogated by the book of common prayer (*n*). In a criminal suit promoted by the incumbent, it is not sufficient to allege that the ringing took place without the consent of the incumbent; it must be alleged to have been against his express wish (*o*). If the charge is proved a conviction will follow. Tolling the bell is an essential part of the burial rites of the Church of England (*p*). The property in the bells, as in other church ornaments, is in the churchwardens (*q. v.*). It is the sexton's (*q. v.*) duty to ring the bell, but if "ringers" are required, their appointment, change, or dismissal probably rests with the minister (*q*).

BENEFICE is a wide term, comprising, according to the definition in the Incumbents' Resignation Act, 1871, "all rectories with cure of souls, vicarages, new vicarages, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries with or without districts annexed or belonging to them" (*r*). It also, strictly speaking, includes bishoprics and other dignities, but "cathedral preferments" has been adopted for the latter in some Acts of Parliament (*s*). No person can be admitted to any benefice in the

(*k*) 1 & 2 Will. 4, c. 38, s. 16.
(*l*) *Pearce* v. *Clapham* (1795), 3 Hagg. Ecc. 16.
(*m*) Can. 67.
(*n*) Can. 88. An agreement as to the times of ringing bells has been sanctioned by Tristram, C., *Re St. Jude's*, Butterworth's Dig. (1909), 193; as to nuisance, Trist. 267.
(*o*) *Daunt* v. *Crocker* (1867), L. R. 2 A. & E. 41.
(*p*) *Burial Board* v. *Thompson* (1871), L. R. 6 C. P. 445.
(*q*) Sacring Bell. *See* LORD'S SUPPER.
(*r*) Cf. Benefices Act, 1898, s. 13.
(*s*) *E.g.*, 13 & 14 Vict. c. 98, s. 3.

Church of England unless he shall have been first ordained priest by episcopal ordination (*t*).

During a vacancy in a benefice, the churchwardens (*q. v.*) take charge of its property and obtain the services of a proper curate, but it is desirable that they should apply to the bishop to be appointed sequestrators before they incur any liability. The profits accruing during a vacancy belong to the new incumbent, who has a common law action for money had and received for their recovery; and first fruits (*q. v.*) are due from the date of the avoidance (*u*).

The "net annual value" of a benefice is computed in two different ways: one under the Pluralities Acts (*x*), and the other the Incumbents' Resignation Act, 1871 (*y*).

BENEFICES ACT, 1898. (*See* INSTITUTION; SIMONY; LAPSE; DUPLEX QUERELA; APPEAL.)

BENEFIT OF CLERGY. A privilege originally granted to the Romish clergy of being tried by the ecclesiastical, *i.e.*, their own Court, instead of the civil Court for any offence, no matter how heinous. This usually meant acquittal. Later, an analogous privilege was extended to the educated laity, who were allowed to plead their "clergy" once, by way of arrest of judgment. The privilege was so much abused that the legislature was forced from time to time to interfere, and finally, in 1827, it was abolished (*z*).

BIBLE (Gr. βιβλια, books) comprises those canonical books of the Old and New Testaments, of whose authority there was never any doubt in the Church (*a*). The canon was settled about the fourth or fifth century, and by some Churches is taken to include the Apocrypha (*q. v.*). The

(*t*) 13 & 14 Car. 2, c. 4, s. 14.
(*u*) 28 Hen. 8, c. 11, s. 3; 1 Eliz. c. 4, s. 6; *Russell* v. *Lay* (1897), 66 L. J. Q. B. 582.
(*x*) See Order in Council, Lond. Gaz. 1908, p. 7307; and FEES.
(*y*) *See* RESIGNATION.
(*z*) 7 & 8 Geo. 4, c. 28, s. 6; Bl. Com. 365; Wharton, Law Lexicon; and Stephen's Hist. of the Criminal Law.
(*a*) Art. 6, in which a list is given.

authorized version, made from the original Hebrew and Greek, was set forth in 1611, and has been adopted in the Prayer Book, except for the Psalter and the communion texts, which are from that edition of Tyndale's translation known as Cranmer's Bible, and which was in use prior to 1611. Within the last few years a new and more accurate translation, known as the revised version, has been promulgated, but it has not yet supplanted the preceding ones. Although the authorized version is "appointed to be read in churches," there seems to be no rule of law to prevent a clergyman reading the lessons from the revised version. Some *English* translation must be used in ordinary churches in England, and some *Welsh* translation, approved by the bishops, in Wales (*b*). In university chapels, Hebrew, Greek, or Latin may be used (*c*), and Latin may also be used at Westminster, Winchester, and Eton Schools, and in the convocations (*d*). Every church and chapel must have a bible of the largest volume (*e*). All Protestant Dissenters make use of the authorized or revised versions. Roman Catholics use a somewhat inaccurate Latin version known as the Vulgate, of which there are English translations.

As to Inspiration of Scripture, see ARTICLES.

BIDDING PRAYER is a prayer which ought to be used before all sermons, lectures, and homilies, but is now rarely heard except in Cathedrals, the Universities, and the Inns of Court. A model form (which may be varied provided that the variation is to the same effect) is given (*f*). Its use is also sanctioned by the Act of Uniformity Amendment Act (*g*).

(*b*) Art. 24; and 5 Eliz. c. 28, s. 1.
(*c*) 2 & 3 Edw. 6, c. 1, s. 6.
(*d*) 13 & 14 Car. 2, c. 4, s. 18.
(*e*) Can. 80.
(*f*) Compare the forms in Can. 55 and Queen Elizabeth's Injunctions, and in King Edward VI.'s Injunctions. "Ye shall pray for the whole congregation of Christ's Church" (Wilkins' Concilia, 4, 8). One of the principal variations, and one which does not seem to be allowable, is that which omits after "Catholic Church" the words "that is, the whole congregation of Christian people, dispersed throughout the whole world."
(*g*) *See* PUBLIC WORSHIP.

BISHOP. The chief ecclesiastic of a diocese. Bishops are mentioned in the New Testament, but apparently as equivalent to elders or priests (*h*). This is explained by a very great, perhaps the greatest, authority on the subject as follows (*i*):—ἐπίσκοποι was the name given in contemporary non-Christian associations to officers of administration and finance. Now in the Christian communities, there appears to have been from very early times a governing body of officers known individually as well as collectively by the name πρεσβύτεροι (elders). "They were also known," Dr. Hatch continues, "for I shall here assume what the weight of evidence has rendered practically indisputable—by the name ἐπίσκοποι (bishops). In their general capacity as a governing body they were known by names which were in current use for a governing body: in their special capacity as administrators of church funds they were known by a name which was in current use for such administrators." Subsequently, when it became necessary to have a chairman of the governing body, the name ἐπίσκοπος clung to him only, as the place which the president occupied in the eyes of the assembly was chiefly that of an administrator. Accordingly, about the middle of the second century, we find every church presided over by an officer called a bishop; thus, about A.D. 160, there is said to have been a bishop of Antioch, Alexandria, and Rome, and also of minor churches such as London, York, and Caerleon. The position of a bishop then was simply that of a *primus inter pares* among the priests in his parish or diocese; the supremacy and monarchical character of the bishop was of later growth (*k*). The church of Rome still ranks bishops and priests in one order, although superior powers are conferred on the former.

In early times, bishops appear to have been elected by clergy and laity (*l*); afterwards, when Christianity became

(*h*) Phill. i. 1; Tit. i. 7; 1 Tim. iii. 1—13; v. 17—22.

(*i*) Rev. Dr. Hatch, Bampton Lectures, pp. 38 and 39.

(*k*) *Ibid.*; sect. 4. See also Bishop Lightfoot's elaborate Dissertation on the Christian Ministry.

(*l*) Now, in England, their only right is that of petitioning the King. *See* CONFIRMATION.

the recognised religion, the emperors, and later the sovereigns of the various kingdoms of Europe took the appointment into their own hands in return for endowments, and reserved the right of confirming the elections and of granting investiture of the temporalities, without which the elected bishop could neither be consecrated nor receive any secular profits. Hence, the right of appointing to bishopries is said to have been in the Crown of England (as founder or patron) even in Saxon times (*m*). The immense power wielded by the Church of Rome in the Norman and Plantagenet period succeeded in wresting this right from the king, who retained only the useless form of granting a licence to elect (*congé d'élire*), the real election lying with the clergy. In the reign of Henry VIII. the ancient right of election was restored to the Crown. The form of *congé d'élire* was retained, but the licence was to be accompanied with a letter missive from the sovereign containing the name of the person whom he would have them elect; and if the dean and chapter delayed their election above twelve days the nomination was to devolve on the sovereign, who might, by letters patent, appoint such person as he pleased (*n*). Bishopries thus became once more royal donatives. Edward VI. continued this, but abolished the *congé d'élire* system, declaring the elections by dean and chapter to be mere colours or pretences of elections, costly to the nominees and prejudicial to the prerogative royal (*o*). Under Mary, the Church of Rome came back to power, and the statutes of Henry and Edward were repealed. Finally, Elizabeth re-enacted the statute of Henry, which governs the elections, in dioceses where there is a dean and chapter, to this day (*p*). The election of a bishop must be signified by the King's mandate to the archbishop of a pro-

(*m*) 1 Bla. Com. 378. So also in the Princes of Wales, Co. Litt. 94a, 97; 25 Edw. 3, st. 4; 24 Hen. 8, c. 12.

(*n*) 25 Hen. 8, c. 20.

(*o*) 1 Edw. 6, c. 2.

(*p*) 1 Eliz. c. 1; 25 Hen. 8, c. 20. See 6 & 7 Will. 4, c. 77; 38 & 39 Vict. c. 34; 39 & 40 Vict. c. 54; 4 Edw. 7, c. 30; and others, in Chron. Index. For list of bishopries, *see* ARCHBISHOP. Several of these were created in the reign of Queen Victoria.

vince, of an archbishop to the other archbishop and two bishops or four bishops requiring them to invest, confirm (*q*), and consecrate the person elected, which they are bound to perform immediately. After which the bishop elect shall sue the King for his temporalities (*r*), shall make oath and do homage to the King and none other, and shall take restitution of his secular possessions out of the King's hands only. A refusal to elect, confirm, or consecrate carries with it the penalties of a præmunire (*q. v.*) (*s*). When there is no dean and chapter the King appoints by letters patent, consecration following in due course (*t*).

A bishop of the Church of England must be fully thirty years of age (*u*). By the Roman canon law this rule applied to all presbyters (except in emergencies), thirty being the age at which our Lord was baptised and began to preach (*x*). He must be a godly and well-learned man, and has to be vouched for as such by two bishops (*y*). He must be able to say—that he is truly called to this ministration according to the will of our Lord Jesus Christ and the order of this realm, that Holy Scriptures contain sufficiently all doctrine required of necessity for eternal salvation, and that he is ready to drive away all erroneous and strange doctrine contrary to God's Word. He is to be to the flock of Christ a shepherd, not a wolf. He must instruct the people out of the Holy Scriptures, and must be prepared to oppose all erroneous and strange doctrine, he must also lead a sober, righteous and godly life, and punish the disobedient or criminous (*y*).

The most ancient diocese is probably London: once an archbishopric, and from its importance undoubtedly the proper seat of the primate of all England, it is also the

(*q*) See *Rex* v. *Abp. of Canterbury*, [1902] 2 K. B. 503; Godolphin, p. 25; and CONFIRMATION.

(*r*) See Watson, 764; 1 Bla. Com. 283; Case de Temporalties, Sav. 52.

(*s*) 1 Bla. Com. 380; and Form of Consecration in Prayer Book.

(*t*) 25 Hen. 8, c. 20, s. 6.

(*u*) Preface to Ordinal (statutory). The same rule applies to deans and other dignitaries: 3 & 4 Vict. c. 113, s. 27.

(*x*) Luke iii. 23.

(*y*) Ordinal (statutory), *q. v.* for further details.

most populous diocese, although some of the suburbs of London are now comprised in St. Alban's, Rochester and Southwark dioceses. The largest is St. David's: for centuries an archbishopric. Its division is suggested. That with the greatest number of benefices is Norwich.

Formerly, all the bishops of England and Wales (except Sodor and Man) had seats in the House of Lords, but since 1847 (when new bishoprics began to be created) only the two archbishops, the bishops of London, Durham, and Winchester, and 21 other bishops (apparently still exclusive of Sodor and Man) in order of seniority are allowed to sit (*z*). The lords spiritual are not essential to the House (*a*). Four Irish prelates sat from 1801 to 1871 (*b*). The bishops (with seats) have precedence next after viscounts. The Moderator of the Church of Scotland ranks (in England) immediately after the bishops with seats, but in Scotland before dukes (*c*). A bishop is not a Peer, and cannot be tried by the Peers (*d*).

The chief powers and privileges of a bishop are:—Ordination, confirmation, consecration of bishops and churches, visitation and correction of the clergy, institution and induction to livings, licensing curates, appointing honorary canons, acting as an ecclesiastical judge, granting common marriage licences, and some minor dispensations (*q. v.*). A bishop may also perform all the functions of the priestly office, and when so doing is a "minister" and bound by the rubrics (*e*). No clergyman, and, it would seem, no layman (except in an emergency), can officiate in any way in church without the bishop's licence. His charge to his clergy may be in some cases a "privileged" communication, but there is no absolute privilege if the bishop sends a report to the Press (*f*).

(*z*) 31 Hen. 8, c. 10; 10 & 11 Vict. c. 108, s. 2.

(*a*) Stephens on Clergy, 164. Elizabeth's Act of Uniformity was passed in spite of the dissent of the Romish bishops.

(*b*) 39 & 40 Geo. 3, c. 67 (Act of Union), Art. 4.

(*c*) Burke, 1909 ed. p. 2414; Dod, 1911, p. 32.

(*d*) Stephens on Clergy, 163; Cruise on Dignities, 53.

(*e*) *Read* v. *Bishop of Lincoln* (1889), 14 P. D. 148.

(*f*) *Laughton* v. *Sodor, &c.* (1873), 21 W. R. 204.

Nothing is more clear than that under the general ecclesiastical law, the power of the ordinary over the clergy of the diocese, and of correcting them, is established and exercised by proceedings in the Ecclesiastical Courts. Private admonition may in some cases be sufficient, but where it is necessary to take proceedings they must be according to due legal procedure (*g*).

When a clergyman is made bishop of a diocese in England or Wales, all his other preferments are vacated, and the right of presentation to them devolves on the King, but not so if he becomes a suffragan bishop (*q. v.*). Also promotion to an Irish, Scotch, American, or colonial bishopric, does not confer on the Crown any rights of presentation (*h*).

Bishops (and archbishops (*q. v.*)) now have fixed annual incomes secured by means of an assignment to them by the Ecclesiastical Commissioners of such lands as will secure as nearly as may be, after deducting costs of management, a net annual income equal to that named by any statute or order in council for the time being in force. Such lands form the endowment, and are to be taken in lieu of a fixed income, but are subject to re-valuation on every avoidance (*i*). The incomes appointed in 1836 were:—London, 10,000*l*., Durham, 8,000*l*., and Winchester, 7,000*l*., the others, about 5,000*l*. each (*k*). Some of the bishops have not had an assignment of lands, but are paid out of the common fund of the Ecclesiastical Commissioners; and the bishops of new dioceses are partly paid out of the incomes of trust funds voluntarily subscribed. Before 1836, the variations were very great, the revenues of Durham being from 20,000*l*. to 40,000*l*. a year, and of Llandaff at one time only 800*l*. a year. The stipends of the prelates of the disestablished church of Ireland vary from 1,000*l*. to 2,500*l*. A bishop

(*g*) *Per* Sir H. Jenner Fust, 2 N. of C. 376. *See* C. D. and P. W. R. Acts.

(*h*) See *Queen* v. *Eton College* (1857), 8 Ell. & Bl. 610.

(*i*) 23 & 24 Vict. c. 124, ss. 3—6.

(*k*) 6 & 7 Will. 4, c. 77. This does not apply to Sodor and Man: see 1 & 2 Vict. c. 30.

is a corporation sole, with perpetual succession and a seal (*l*).

When a bishop (or archbishop) becomes incapacitated by age or some mental or permanent physical infirmity, his Majesty may, under the Bishops' Resignation Act, 1869 (*m*), if satisfied of such incapacity, and that the bishop has canonically resigned, declare the see vacant. The retiring bishop is to receive out of the revenue of the see one-third of the income, or 2,000*l*. a year, whichever is the greater, and may have assigned to him for his use for life any episcopal residence occupied by him. The new bishop is not required to pay the usual fees and charges on accession till the death of the retiring bishop, except the necessary expense of his election and consecration (*m*). In a case of mental incapacity a bishop coadjutor (*q. v.*) may be appointed. The usual course in the case of an aged or overworked prelate, is to appoint a suffragan bishop (*q. v.*).

A bishop is supposed by an ancient fiction to be wedded to his see. Hence he still impales its arms; his own taking the place which would ordinarily be occupied by his wife's. He also drops his own surname and signs that of his see, using generally either the Latin or English abbreviation, *e.g.*, the late Archbishop of Canterbury signed "F. Cantuar.," the late Archbishop of York, "Willelm. Ebor.," and the Bishop of Ripon "W. B. Ripon." This is the usual way in which a *peeress* signs her name.

A bishop is styled "Right Reverend," "Father in God," "My Lord," and "by Divine Permission," or sometimes "by Divine Providence." He is also called "the Ordinary" (*q. v.*) and "Prelate."

The customary vestments of a bishop are the rochet, chimere and hood. (*See* ROCHET; VESTMENTS.)

The fees and stamp duties payable by a newly-made bishop

(*l*) All the ecclesiastical ordinaries should have the King's arms engraven on their seal of office, except perhaps the Archbishop of Canterbury: Godolphin, 28; and see *Cort* v. *St. David's* (1634), Cro. Car. 341, as to use of seal.

(*m*) 32 & 33 Vict. c. 111, made perpetual by 38 & 39 Vict. c. 19.

of one of the ancient sees in respect of his appointment amount to about 400*l.* (*n*).

The stamp duty on a *congé d'élire,* and also on the royal assent and the restitution of temporalities, is 30*l.* (*o*).

The King has power to create a bishopric in any part of his dominions, except where, as in Scotland, such an exercise of prerogative is forbidden (*p*), or where there is a responsible government (*q*). In a newly settled colony there is no established church, and imperial legislation may raise any sect to that position or leave them all equal. When a bishop of the Anglican Communion is planted in Scotland or in a foreign country, he is usually styled bishop *in,* not *of,* the particular place, *e.g.*, bishop *in* Jerusalem, bishop *in* Edinburgh; but it must be remembered that such titles are of no civil value, and give no precedence in civil rank, they must not be confused with the titles used by established churches, which are conferred by the Crown. Consequently an Irish, Scotch, or colonial bishop has no legal authority to assume the title of "lord" bishop, or to be addressed as "my lord," in England or Scotland. In Ireland certain bishops and moderators come under Queen Victoria's special rules (*r*).

BLACK GOWN was part of the ordinary dress of the clergy in the reigns of Edward VI. and Elizabeth (*s*), the surplice being worn over it or exchanged for it when "ministering." The sermon not being a "ministration," the black gown is now, as it has been ever since the Reformation, the customary and proper preaching dress. The surplice is, however, also legal (*t*).

BLASPHEMY. An offence against God and religion by

(*n*) *See* FEES. The fees paid by the late Archbishop Magee on his translation to York were 573*l.* 6*s.*

(*o*) 54 & 55 Vict. c. 39.

(*p*) *Per* Lord Campbell, in *Queen* v. *Eton College, ubi sup.*

(*q*) See *Long* v. *Cape Town* (1863), 1 Moore, P. C. N. S. 411. *And see* ANGLICAN COMMUNION.

(*r*) As to these, *see* ARCHBISHOP.

(*s*) Tomlinson on P. B. 49; Injunctions of Eliz. 1559, No. 30.

(*t*) *Re Robinson*, [1897] 1 Ch. 85.

indecent abuse of the Almighty, or of our Saviour Christ. It is an offence both at common and statute law (*u*).

By a statute passed in the 17th century, the mere denial *by an apostate* of the truth of Christianity, or of the divine authority of the Holy Scriptures (and formerly of the doctrine of the Trinity), constitutes the offence of blasphemy. And as recently as 1867, it was held that this statute was in full force, and that the delivery of lectures maintaining that the character of Christ is defective, and his teaching misleading, and that the Bible is no more inspired than any other book, is blasphemy; and a person who hired rooms for the delivery of these lectures hired them for an "unlawful purpose," and the lettor was not bound by his contract (*x*). But this decision has been adversely criticised in several cases, and especially in the celebrated judgment of Lord Coleridge, L. C. J., in the *Foote case*, which decided that the maxim that Christianity forms part of the law of England (in the old sense) is now obsolete; as also is the above-mentioned statute; and that the mere denial of the truth of the Christian religion is not sufficient to constitute the offence of blasphemy. There must be added a wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred subjects or by wilful misrepresentations or artful sophistries calculated to mislead the ignorant and unwary. It seems that if the decencies of controversy are observed, even the fundamentals of religion may be attacked without committing blasphemy (*y*).

Every person guilty of atheism, blasphemy, or any damnable doctrine or opinion (not punishable at common law) may also be proceeded against in the Ecclesiastical Court (*z*), but the proceedings would not be attended with much success. Any person who, being present at a burial under the Burial Law Amendment Act, 1880, shall endeavour

(*u*) 9 & 10 Will. 3, c. 35 (or 32) as amended in favour of Unitarians by 53 Geo. 3, c. 160, s. 2.

(*x*) *Cowan* v. *Milbourn* (1867), L. R. 2 Ex. 230.

(*y*) *Reg.* v. *Ramsay and Foote* (1883), 48 L. T. 733; 15 Cox, C. C. 235.

(*z*) Stephen's Crim. Dig. 98; and *Phillimore* v. *Machon* (1876), 1 P. D. 481.

to bring into contempt or obloquy the Christian religion or Christian ministers of any denomination is guilty of a misdemeanour (*a*).

BRAWLING is riotous, violent, or indecent behaviour in a place of worship, whether during the celebration of divine service or at any other time, or in any churchyard or burial ground (*b*).

Brawling by a layman (as also molestation of a minister) is no longer punishable by the Ecclesiastical Courts, but as a civil offence it is a misdemeanour under several statutes. The penalty under 52 Geo. 3, c. 155, is 40*l.*; under 23 & 24 Vict. c. 32, 5*l.* or two months' imprisonment; and under the 24 & 25 Vict. c. 100, s. 36, two years' imprisonment with or without hard labour, and the offender may also be fined and required to give sureties (sect. 71).

Under 23 & 24 Vict. c. 32, any constable or churchwarden of the parish has power to apprehend the offender and take him before a justice. There is an appeal to quarter sessions from a conviction under this Act (*c*). A man may be convicted for brawling, although acting in the *bonâ fide* assertion of a claim of right, and that independently of the question whether the claim is a good one or not (*d*). It was held, by London Quarter Sessions, that under this Act the behaviour must be really riotous, violent, or indecent, mere protests as recently made by Mr. Kensit or Rev. W. Black are not sufficient. In a case in which, in a Church of England church, a cross was placed on the "altar steps" and the congregation went up two by two to kiss it, and a person present took up the cross and said, holding it above his head, in a loud voice, "In the name of God I protest against this idolatry," it was held that violent conduct or brawling was not proved (*e*). But, on the other hand, in a case where,

(*a*) 43 & 44 Vict. c. 41, s. 7.
(*b*) 23 & 24 Vict. c. 32, s. 2.
(*c*) Sects. 2, 3, and 4. (N.B.—Sect. 4, from "which shall be holden," is repealed.)
(*d*) *Asher* v. *Calcraft* (1887), 18 Q. B. D. 607. As to "molesting" the minister under this Act, *see* ALMS.
(*e*) *Kensit* v. *Rose* (1898), 62 J. P. 489.

in answer to the invitation in the ordination service, a statement was read in a perfectly orderly manner, this was, nevertheless, held to be brawling (*f*).

The 24 & 25 Vict. c. 100, s. 36, is to the following effect: "Whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting-house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place, or shall strike or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties aforesaid, or who, to the knowledge of the offender, shall be going to perform the same or returning from the performance thereof, is guilty of a misdemeanour, and being convicted thereof, is liable to *two years*' imprisonment with or without hard labour" (*g*).

Also, by the Burial Law Amendment Act, 1880, provision is made to prevent improper conduct at burials. (*See* BURIAL.)

The penalties for brawling apply to the clergy as well as the laity (*h*).

A clergyman may also be guilty of brawling if he uses intemperate and scolding language in the pulpit, or preaches against individual members of the congregation in a violent or censorious manner (*i*).

It was (before 1860) held to be brawling for a private parishioner to publish a notice of vestry, or any other notice, by words during church time (*k*).

(*f*) *Kensit* v. *St. Paul's*, [1905] 2 K. B. 249.

(*g*) As to what is "officiating," *see* CONGREGATION; ALMS.

(*h*) *Vallancey* v. *Fletcher*, [1897] 1 Q. B. 265; *Girt* v. *Fillingham*, [1901] P. 176.

(*i*) See *Burder* v. *Hale* (1849), 6 N. of C. 611.

(*k*) *Dawe* v. *Williams* (1824), 2 Addams, 130.

BULL. A brief or mandate of the Pope of Rome, so called from the seal of lead or gold affixed to it, upon which are engraved images of St. Paul and St. Peter, the Pope's name, and the year of his Pontificate. To procure, publish, or put in use a Papal bull, involves the penalties of præmunire (*q. v.*).

BURIAL. A person may direct the place and method in which his corpse is to be disposed of, *e.g.*, by cremation (*q. v.*), but in default of such direction, the deceased is to be buried in a manner suitable to the estate he left behind him (*l*). It is the official duty of the executor or administrator to see to this (*m*); and it appears that even if the executor never receives assets to the amount of the funeral expenses, he is liable to pay, although he did not order the funeral (*n*). This, if a correct statement of the law, seems hardly satisfactory, and it is to be presumed that a person who is not informed that he is executor, or of the death, until after the funeral would not be liable. One who renounces without acting would certainly not be liable. It is, however, clear that if the executor orders the funeral, he is personally liable to pay in any case (*o*).

Upon general principles a man has only a right of burial in his own parish unless some Act of Parliament has given him a choice of burial in some other parish (*p*), and this right only extends to the churchyard or burial-ground. There is no right to burial in a church except by faculty or prescription, and a faculty for the purpose is now very rarely granted (*q*). The incumbent cannot give a general licence, but, it would seem, he may give leave to bury in

(*l*) 2 Bla. Com. 508; *In re Dixon*, [1892] P. 393.

(*m*) See *Williams* v. *Williams* (1882), 20 Ch. D. 659; and CREMATION.

(*n*) *Per* Jessel, M.R., in *Sharp* v. *Lush* (1879), 10 Ch. D. 472.

(*o*) And see Williams on Executors, p. 1787.

(*p*) *Per* Manisty, J., in *Hughes* v. *Lloyd* (1888), 22 Q. B. D. 162, but it is not illegal for a non-parishioner to be buried in a churchyard. See *Re Sargent* (1890), 15 P. D. 168, and authorities cited p. 169.

(*q*) *Rugg* v. *Kingsmill*, cited under VAULT.

the church in each particular instance (*r*). The Court may make orders limiting the incumbent's right to grant licences for burial of non-parishioners (*s*). A parishioner cannot claim to be buried in a vault or any particular part of the churchyard (*t*), except by faculty or prescription. In large towns burials are usually in cemeteries. An executed criminal is to be buried in prison, but if there is no convenient space, the Secretary of State must be applied to (*u*). Suicide is now no bar to the usual burial; but it is (unless "while of unsound mind" is appended to the verdict) to the performance of the rites of a Church of England burial (*x*). Corpses found in or cast on shore from the sea (*y*), or any tidal or navigable waters (*z*), must be decently buried in the parish where they are found by the churchwardens and overseers. The expenses must not exceed the sum usually allowed for burying at the expense of the parish, and proper expenses are reimbursed to the churchwardens by the county treasurer on a justice's order (*a*). Notice of finding the body may be given to a police constable.

No buried human remains may be taken up or removed without a licence from a Secretary of State, except where a body is removed from one consecrated place of burial to another under a faculty (penalty 10*l*. (*b*)). But it would seem that in the case of consecrated ground such a licence does not obviate the necessity for a faculty. On the other hand, the Ecclesiastical Courts have no power to order any disinterment (*c*).

By the Burial Laws Amendment Act, 1880, where a

(*r*) *Bryan* v. *Whistler* (1828), 8 B. & C. 295.
(*s*) *De Romana* v. *Roberts*, [1906] P. 332.
(*t*) *Ex parte Blackmore* (1830), 1 B. & Ad. 122; and see L. R. 3 C. P. 529.
(*u*) 31 & 32 Vict. c. 24, s. 6.
(*x*) *See* SUICIDE.
(*y*) 48 Geo. 3, c. 75.
(*z*) 49 & 50 Vict. c. 20.
(*a*) See *Queen* v. *Treasurer of County of Kent* (1889), 22 Q. B. D. 603.
(*b*) 20 & 21 Vict. c. 81, s. 25. See *Re Dixon*, [1892] P. 386; *St. Helens, &c.*, [1892] P. 259; *St. Michael*, [1893] P. 233.
(*c*) *R.* v. *Dr. Tristram* (1899), 80 L. T. 414; *Re Talbot*, [1900] P. 1; *Lee* v. *Hautrey*, [1898] P. 63; *R.* v. *Dr. Tristram*, [1898] 2 Q. B. 371.

person is *entitled* (*d*) to be buried in any churchyard or graveyard, any person responsible for the burial may give a "Notice of Burial," in the form given below (*e*), to the incumbent or clergyman that the burial will be without the Church Service. *Unless by arrangement* the time of such burial must be between 10 a.m. and 6 p.m., from 1st April to 1st October, and between 10 a.m. and 3 p.m. from 1st October to 1st April, and must not be (in the case of a churchyard) on a Sunday, Good Friday, or Christmas Day, if the incumbent objects in writing for a reason. If the hour is inconvenient on account of some other service having been, previously to the receipt of such notice, appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, or by reason of any valid bye-laws limiting the times for burials, the person receiving the notice may fix the hour by notice in writing (*f*). The Act does not prevent the same fees being payable, and the same regulations being made as if the burial had been with the Church Service (*g*). The burial may be either without any religious service, or with such religious service, if professedly Christian and orderly, as the person responsible for the burial may think fit. All persons are to have free access to the churchyard or graveyard (*h*), but any who are disorderly, or deliver any address not being part of such

(*d*) 43 & 44 Vict. c. 41, s. 9.

(*e*) This notice must be in the following form:—

"I , of , being the relative [*or* friend, *or* legal representative, *as the case may be, describing the relation, if a relative*] having the charge of or being responsible for the burial of *A. B.*, of , who died at , in the parish of , on the day of , do hereby give you notice that it is intended by me that the body of the said *A. B.* shall be buried within the [*here describe the churchyard or graveyard in which the body is to be buried*], on the day of , at the hour of , without the performance in the manner prescribed by law of the service for the burial of the dead according to the rites of the Church of England, and I give this notice pursuant to the Burial Laws Amendment Act, 1880.

"To the Rector [*or as the case may be*] of ."

It is important that this form should be carefully filled up, as it has been held that the omission of the address renders the notice bad. (*Hoare* v. *Ram* (1881), 45 J. P. 729.)

(*f*) 43 & 44 Vict. c. 41, ss. 3 and 4.

(*g*) Sect. 5. (*h*) Sect. 6.

religious service, or who endeavour to bring into contempt or obloquy the Christian religion, or the members or ministers of any Christian Church or denomination, or any other person, are guilty of a misdemeanour (*i*); and all powers for the preservation of order may be exercised as if the burial were according to the rites of the Church of England (*k*). A certificate of the burial must be transmitted to the rector or registrar, who must enter the burial in the register (*l*).

The service for the burial of the dead in the Prayer Book may be used for persons buried in unconsecrated ground (*m*), for a person baptized by a layman, or who died in a state of intoxication (*n*), or for a dissenter (*o*). The general rule is that the parish minister must bury all persons who are brought to the church (*o*), the only exceptions being: any that die unbaptized or excommunicate (*i.e.*, from the Christian Church generally (*o*), not merely from the Church of England), or have laid violent hands upon themselves (*p*) while of sound mind (*q*), or where the burial is required to be in a new and unusual mode (*r*).

The incumbent is entitled in any case to a "convenient warning" (*s*); but if he then improperly refuses or delays to bury, he is punishable by the ecclesiastical law, or a *mandamus* to compel him may be obtained (*r*).

In any case where the burial service may not be used, and in any other case at the request of the person having charge of the burial, any clergyman of the Church of England authorized to perform the burial service may use such service consisting of Prayers from the Prayer Book and portions of Holy Scripture as may be approved by the ordinary (*t*).

The burial service should, if possible, be performed by a

(*i*) Sect. 7.
(*k*) Sect. 8.
(*l*) 43 & 44 Vict. c. 41, s. 10.
(*m*) Sect. 12.
(*n*) *Cooper* v. *Dodd* (1850), 7 N. of C. 514.
(*o*) *Kemp* v. *Wickes* (1809), 3 Phill. 274. *See* BAPTISM.
(*p*) Rubric ; Can. 68.
(*q*) *See* SUICIDE.
(*r*) *R.* v. *Coleridge* (1819), 2 B. & Ald. 808. *See* CREMATION.
(*s*) Can. 68. And see Cripps, p. 656.
(*t*) 43 & 44 Vict. c. 41, s. 13.

"priest" (*u*); a person not duly authorized by the ecclesiastical law (*i.e.*, presumably a layman) cannot read the Church Service in consecrated ground unless the proper notice has been given under the Burial Laws Amendment Act (*x*), in which case, as before mentioned, any "Christian service" may be used.

An interment must in all cases be decent, and generally coffins are used. These may be of wood, lead, or iron; but if of the more durable material, it would seem that extra fees may be demanded (*y*), for they are likely to bring additional charges on populous parishes. Funerals and persons attending them are exempt from tolls (*q. v.*) (*z*).

Though the right to burial is a civil right, still a burial is an "ecclesiastical purpose" if not in the abstract, at any rate under 19 & 20 Vict. c. 104, s. 14. So, when a district which has a burial ground becomes a distinct parish for ecclesiastical purposes, the inhabitants of such new parish cease to have any right of burial in the old parish (*a*). Until the new parish has a burial ground, the right to burial in the old parish continues (*b*).

By the Births and Deaths Registration Act, 1874, the person who buries or performs any burial service without a coroner's order or registrar's certificate being delivered to him, must, within seven days after the burial, give notice in writing to the registrar; penalty for neglect, 10*l.* (*c*). This does not apply to a burial under the Burial Laws Amendment Act, 1880 (*d*). A deceased child must not be buried as if it were still-born, and no child may be buried as still-born without a proper medical certificate, or if no medical man was present, from the father, mother, occupier of house where the child was born, or a person present at the birth or having charge of the child, or if there has been an inquest the

(*u*) *See* Rubrics and ABSOLUTION.
(*x*) *Johnson* v. *Freud* (1860), 6 Jur. N. S. 280.
(*y*) *Gilbert* v. *Buzzard* (1820), 3 Phill. 335, 359. And see Cripps.
(*z*) 20 & 21 Vict. c. 81, s. 14.
(*a*) *See* PARISH; and *Hughes* v. *Lloyd* (1888), 22 Q. B. D. 157.
(*b*) 7 & 8 Geo. 4, c. 72, s. 2.
(*c*) 37 & 38 Vict. c. 88, s. 17.
(*d*) 43 & 44 Vict. c. 41, s. 11; 44 & 45 Vict. c. 2.

coroner's order (penalty 10*l.*) (*e*). If the coffin contains more than one body, notice must be given to the person performing the burial service (penalty 10*l.*) (*f*).

Fees. In early times all fees to the clergy for burials were forbidden as simoniacal, but now they are very generally payable either by custom or statute. The incumbent is not entitled to a fee unless the person is actually buried; it is not sufficient that he died in the parish. The fees vary considerably. The parson's customary fee is said to be 3*s.* 4*d.* for the churchyard, and 6*s.* 8*d.* for the chancel (*g*). Where an iron coffin is used the fee may be increased by a sum varying from 5*l.* to 20*l.* (*h*). Plots of ground in the churchyard may be purchased as burial places, and in London diocese the usual fee is thirty guineas for parishioners and sixty guineas for non-parishioners (*i*).

CANON. Canons are residentiary members of a cathedral chapter (*k*). They are appointed sometimes by the Crown, sometimes by the bishop (as at York, Chester, Chichester, Hereford, Salisbury, and Wells), and sometimes by the other canons (*l*). Honorary canons are appointed by the bishop (*m*). No one is eligible for a canonry unless he has been six years in priest's orders, except in the case of a canonry annexed to an office in any University (*n*). They are supposed to hold themselves in readiness to preach throughout the diocese (*o*). Minor canons are appointed by the chapter (*p*). A large number of canonries have been suppressed, and their emoluments vested in the Ecclesiastical Commissioners (*q. v.*). The income of a canonry varies from

(*e*) 37 & 38 Vict. c. 88, s. 18.
(*f*) Sect. 19.
(*g*) 1 Burn, 268.
(*h*) *Gilbert* v. *Buzzard, ubi supra.*
(*i*) *Re Hendon Churchyard* (1910), 27 T. L. R. 1.
(*k*) They have no freehold qualification as such under 4 & 5 Vict. c. 39, s. 25; *Harris* v. *Phillips*, [1891] 1 Q. B. 267.
(*l*) 3 & 4 Vict. c. 113, ss. 25, 26, 34; 4 & 5 Vict. c. 39.
(*m*) 3 & 4 Vict. c. 113, s. 23.
(*n*) 3 & 4 Vict. c. 113, s. 27.
(*o*) Can. 43.
(*p*) 3 & 4 Vict. c. 113, ss. 45, 46; 4 & 5 Vict. c. 39, s. 15; 1 & 2 Vict. c. 106; and 13 & 14 Vict. c. 98. *See* VICARS CHORAL.

about 350*l.* to 1,000*l.* a year (*q*), and in addition a canon frequently holds an archdeaconry. He must be three months yearly in residence (*r*).

The stipend of a minor canon (if in holy orders) must not be less than 150*l.* a year, and in each cathedral or collegiate church there must not in any case be more than six nor less than two in number. They may hold a benefice in addition, if within six miles of the cathedral or collegiate church (*s*).

Under the provisions of the Deans' and Canons' Resignation Act, 1872, a canon or minor canon, when incapacitated, can resign on a pension of one-third of his income. If a canon (not a minor canon) holds no other preferment, his pension is not to be less than 250*l.* in England, or 175*l.* in Wales (*t*).

The fees on collation and installation to a canonry amount to 8*l.* 10*s.* 6*d.*; honorary canonry, 5*l.* 15*s.* 8*d.*; and on collation to a minor canonry, 2*l.* 12*s.* 6*d.* (*See* FEES.)

CANON LAW. The canon law is the body of rules by which a church is governed, but the term in its ordinary meaning is restricted to the canon law of the Church of Rome, the *corpus juris canonici*, corresponding to the *corpus juris civilis*.

The Church of Rome being a free religious society, was and is still governed by its own rules, the canon law. It also secured for itself in various countries as much power as it could in matters temporal. Thus by the "goodness of princes" it was allowed to adjudicate on such matters as matrimony and testamentary dispositions. It was over this borderland that the warfare between the States and the Church of Rome waged in pre-Reformation times, not over matters purely spiritual, in which the Kings never interfered with the Pope.

Prior to the Reformation the canon law in force in

(*q*) 3 & 4 Vict. c. 113, s. 66; 62 & 63 Vict. c. 28.
(*r*) 3 & 4 Vict. c. 113, s. 3.
(*s*) See note (*p*), opposite.
(*t*) 35 & 36 Vict. c. 8.

England in matters spiritual was the general canon law of the Roman patriarchate (*u*). A small portion of this law was formulated under papal sanction in (1) provincial, and (2) legatine constitutions. In England the provincial constitutions were the decrees of the provincial synods of Canterbury and York, chiefly the former, the Archbishop of Canterbury being a papal legate. The legatine constitutions were those made in synods held under the presidency of foreign papal legates, chiefly those of Cardinals Otho and Othobon in the time of Henry III. But these local canons could not contravene the *jus commune* of Rome, if they did they were *ultra vires*. They were merely explanatory or declaratory of it. No bishop and no one but the Pope could abrogate or alter the canon law, says Lyndwood (*v*). The idea that the Roman Catholic bishops in England in pre-Reformation times were a law unto themselves in matters spiritual is devoid of all authority. They obeyed the Pope, and no one else.

But the canon law as a body of law never did form part of the law of England (*x*), hence arose the practice of prohibition (*q. v.*) instead of appeal, when the ecclesiastics made a raid over the borderland.

At the Reformation, the Pope's authority in matters spiritual and temporal was taken away, and in 1533 by an Act of Parliament, called the Act of the Submission of the Clergy (*y*), the clergy were, much against their will, cut off from the Roman Catholic Church and from the operation of the canon law.

By this Act of Submission of the Clergy the canon law

(*u*) The best edition of the *Corpus Juris Canonici* is that by Richter & Friedberg Tauchnitz. Leipzig, 1879, 2nd ed. For a description see article by the author in the *Protestant Dictionary*, edited by Wright & Neil.

(*v*) "Tollere vel alterare non potest episcopus nec aliquis papa inferior." By *jus commune* or common law Lyndwood "means the ecclesiastical law or common law of Christendom": *per* Best, C. J., *Rennell* v. *Lincoln* (1825), 3 Bing. 271; and see Maitland, *Roman Canon Law in the Church of England*.

(*x*) *R.* v. *Millis* (1844), 10 Cl. & Fin. H. L. 680; *Le Case de Commenda* (1612), Dav. Ir. 71.

(*y*) 25 Hen. 8, c. 19.

was "utterly abolished" and became "frustrate and of none effect" (*z*), and it was enacted that a "view" should be had of it (*a*). This review was begun at once, under the direction of the learned Archbishop Cranmer, thus: In 1534 a new order for the confirmation of bishops, which differed from the canon law, was drawn up and is still used, and cannot now be departed from (*b*). In 1536 the study of the canon law was prohibited at the universities, but it appears from the Doctor of Laws Act, passed in 1545 (*c*), that the new rules, contrary to the canon law, were not being drawn up and put in use as rapidly as Parliament desired, for that Act was passed specially to enable laymen and married men being doctors of civil law (*d*) to become diocesan chancellors and officials, and notice is therein taken that "the contrary to the canon law" is not being put in exercise by bishops and other officials. This is not surprising; for the clergy as a body were strongly opposed to the Reformation, which was a lay movement carried out by the Government with the help of a few notable ecclesiastics. But by degrees the review was completed piecemeal, so that at the present day every necessary part of the canon law has long since been incorporated either into the common or statute law of the realm (*e*).

In the present day, if it is desired to show that any old rule or usage (whether of the civil or canon law) is now binding, it must be pleaded and proved that such rule has

(*z*) 37 Hen. 8, c. 17, and 25 Hen. 8, c. 19.

(*a*) 25 Hen. 8, c. 19. It was also enacted that until such review all canons, institutions, ordinances, and synodals provincial being then already made and not repugnant to the law of the land, or the King's prerogative, should still be used and executed, as they were afore the making of the Act, till such time as they be "viewed."

(*b*) *See* CONFIRMATION. In like manner the rule as to the tonsure was viewed and dropped, and also the rule that a deacon could not solemnize matrimony was abolished. In this way new rules grew up, some of which did not get into the statute book for some years, and others simply became part of the common law of the realm.

(*c*) 37 Hen. 8, c. 17.

(*d*) Degrees in canon law had been abolished.

(*e*) A codification of the laws ecclesiastical drawn up by Cranmer, and called the *Reformatio Legum*, never became law *en bloc*. Blackstone said in 1766, "no such review has yet been perfected" (1 Com. 83).

been received, observed, and acted upon, or, in other words, has been the invariable usage in England from the earliest times down to the Reformation, and that it has been continued and uniformly recognized and acted upon in England since the Reformation (*f*).

Hence it follows that the common law of the realm in matters ecclesiastical (like the canon law, but unlike the statute law) may become obsolete and abolished by general and long-continued non-user and custom to the contrary (*g*).

Continuous and ancient post-Reformation usage, as to which no positive law exists, is legal, if no objection to its legality can be found and no decision that it is illegal; as was decided in the *Black Gown case* where the warrant of law was held to be the continuous user for centuries (*h*).

In the primitive church, the laity were present at all synods. When the empire became Christian no canon was made without the Emperor's consent. The Emperor's consent included that of the people, he having in himself the whole legislative power, which our Kings have not. Therefore, if the King and clergy make a canon, it binds the clergy *in re ecclesiasticâ*, but it does not bind laymen, they are not represented in convocation, their consent is not asked or given (*i*).

The Act of Submission also enacted that no subsequent canon should be valid (*i.e.*, binding on the clergy) without the royal assent. Edward VI. and Queen Elizabeth promulgated rules in the nature of canons under the names of injunctions and advertisements, and in the year 1604, the clergy, with the assent of James I., enacted 141 canons, but

(*f*) *Exeter* v. *Marshall* (1868), L. R. 3 H. L. 17. Hence it is now impossible to prove the legality of, for example, the bishop's mitre.

(*g*) As to canon law see Dist. 4, "Sicut enim moribus utentium in contrarium nonnullæ leges hodie abrogatæ sunt ita moribus utentium ipsæ leges confirmantur." As to laws of Scotland, see *Desuetude*, Green's Encyclopædia. In France and other countries which follow the civil law, statutes become obsolete by desuetude.

(*h*) *Re Robinson*, [1897] 1 Ch. 85.

(*i*) Salkeld, 412.

they were never confirmed by Parliament. They therefore do not bind the laity or the clergy as to their temporalities, except so far as they are declaratory of an ancient rule of law continuously acted upon in accordance with *Exeter* v. *Marshall* (*k*). They form a code of ecclesiastical law binding on the clergy as to their spiritualities, but they are by no means uniformly obeyed, and many of them are either repealed or obsolete (*l*).

Since the year 1865, various canons have been revised by the clergy with the assent of the sovereign, but only for the purpose of bringing them into accord with new statute law.

Non-established churches may, of course, make their own canons, but to alter them sometimes necessitates a resort to the legislature and law Courts (*m*). It is, however, clear law that the Courts "will not interfere with the rules of a voluntary association, unless to protect some *civil* right or interest which is said to be infringed by their operation" (*n*).

The "constitutions" of the Church of Ireland, made since its disestablishment, may be usefully compared with those of the Church of England.

CATECHISM is "an instruction to be learned of every person before he be brought to be confirmed by the bishop." The rubrical direction as to instruction in the catechism upon Sundays and Holy Days *after the second lesson at evening prayer,* is now generally disregarded on account of its inconvenience, but the canon, which directs that it shall be *before evening prayer,* is complied with as to "the youth," but

(*k*) (1868), L. R. 3 H. L. 17; see *ante*, 6 Q. B. D. at p. 393; *Middleton* v. *Crofts* (1736), 2 Atk. 669; *Reg.* v. *Millis* (1844), 10 Cl. & Fin. 680.

(*l*) As to obsolescence see *ante*. In the year 1640, seventeen canons were passed, but they are of no legal force whatever; they "never had any binding authority in the Ecclesiastical Courts." *Per* Sir H. J. Fust, in *Cooper* v. *Dodd* (1850), 7 N. of C. 516; and Ecc. Courts Com. Rep. p. xxxvi.

(*m*) See Winslow, Law of Protestant Nonconformists; and Birstall Wesleyan Chapel Trust Scheme Confirmation Act, 1890.

(*n*) *Per* Lord Colonsay, in *Forbes* v. *Eden* (1867), L. R. 1 Sc. Ap. 568; *General Assembly* v. *Lord Overtoun*, [1904] A. C. 515; and 5 Edw. 7, c. 12. *And see* ANGLICAN COMMUNION.

not as to "ignorant persons," by means of the Sunday Schools (*o*). The rubric is the binding authority.

CATECHUMEN, a person who is going through a course of instruction preliminary to baptism. England being a Christian country, catechumens are far from numerous, except in those sects which do not allow infant baptism.

CATHEDRAL, the seat of a bishop. It confers the title of city, but it is doubted whether a city must not now also be a borough incorporate (*p*). A diocese was originally the same as a parish is now, and consequently the cathedral is still considered as the parish church of the whole diocese, *e.g.*, if one resort to a cathedral it is the same as resorting to a parish church within the statutes (*q*). Cathedrals are managed by the dean and chapter under the provisions of the Cathedral Acts, but their mode of government is not uniform (*r*). To a certain extent they are not within the jurisdiction of the bishop's Court. Alterations are made in them, and ornaments introduced, without a judicial order (*s*), subject, however, to an appeal to the bishop as visitor, and thence to the Privy Council (*t*). Cathedrals and collegiate churches also come within the Public Worship Regulation Act (*q. v.*).

More elaborate services are permitted and expected in cathedrals than in ordinary churches. (*See* SINGING.)

A fee called *cathedraticum* or *synodals* (now practically obsolete) is said to be payable by every parochial minister to the cathedral (*u*).

CATHOLIC (Gr. καθολικός, universal) is really equivalent to "Christian" (*x*), but in common parlance, the term is

(*o*) See Rubric, Can. 59; and Adol. Comp. p. 419.
(*p*) Cripps, p. 387.
(*q*) Gib. 171.
(*r*) 3 & 4 Vict. c. 113; 4 & 5 Vict. c. 39; 27 & 28 Vict. c. 70; 36 & 37 Vict. c. 39.
(*s*) 12 P. D. 201.
(*t*) *Per* Dr. Tristram, [1898] P. 74. *And see* CHAPTER and VISITATION.
(*u*) *See* PROCURATIONS; SYNODALS.
(*x*) See BIDDING PRAYER definition in Can. 55. It may be doubted whether, on the construction of Art.

used to describe a member of the *Roman* Catholic Church. The principal divisions of Christendom are the Orthodox Catholics, the Roman Catholics, and the Protestant Catholics. (*See* CHURCH.)

CAVEAT. The formal notice given to stay proceedings in a matter (*e.g.*, grant of a faculty). It usually runs—

"Enter a caveat that nothing be done in the matter unknown to us, being persons having an interest."

CEMETERY. A place of burial differing from a churchyard (1) by being separate from a church; (2) from the fact that a permanent burial place can be purchased in it (*y*). (*See* further under CHURCHYARD.)

CEMETERY CHAPLAIN. Under the Cemetery Clauses Act, 1847 (which may be incorporated into any special cemetery Act), a clerk in holy orders must be appointed as chaplain of the consecrated part of a cemetery. He must be licensed by the bishop, and is removable by him for any cause which appears to him reasonable. His duties are to perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery. He is to be paid such stipend as the bishop may approve. If the stipend be not paid, it is recoverable by action at law. He has the same duties to perform with respect to registers (*q. v.*) as an incumbent, and a clerk may, with the consent of the chaplain, be appointed by the cemetery company to assist him. Any clergyman of the Churches of England or Ireland, not being prohibited by the bishop, nor under ecclesiastical censure, may, at the request of the executor or person having charge of the burial, and with the chaplain's or bishop's consent, perform the burial service in a cemetery (*z*). And by the

19, the Greeks and Romans form part of the Visible Church of Christ.

(*y*) Wharton's Law Lexicon. *See* Cemetery Clauses Act, 1847, 10 & 11 Vict. c. 65; and BURIAL; CHURCHYARD.

(*z*) 10 & 11 Vict. c. 65, ss. 27—34.

Burial Laws Amendment Act, 1880, the burial may be without the church service; as to which, see BURIAL.

CEREMONIES, Definition of. (*See* PUBLIC WORSHIP.)

CESSION. (*See* INCUMBENT.)

CHALICE (Lat. *calix*). The Romish name for the cup used at the communion (*a*).

CHANCEL (from *cancelli*, the lattice-work partition which formerly stood between the choir and the body of the church (*b*)) is the eastern end of a church where the communion table usually stands. It belongs to the rector, whether lay or ecclesiastical, and as a general rule he is bound to repair it (*c*). But in London and other large towns there exists a custom for the parishioners to repair (*d*). If the rector refuses to repair, the vestry should take proceedings in the Consistory Court, which will issue a monition for the execution of the repairs, and has full power to enforce it (*e*); but there must be "an existing necessity for repair" (*f*). Proceeds of sale of a churchyard have been ordered to be applied towards the repairs of chancel (*g*). A faculty may also be granted for its enlargement (*h*).

Before the Reformation the chancel had a sacred character distinguishable from the rest of the church, and was reserved exclusively for the clergy, but this was altered, and since the Reformation a lay rector has been entitled to the chief seat or pew in the chancel (*i*). The other seats have been and

(*a*) *See* CUP.

(*b*) As in an ancient Roman Court of Justice. See article "Chancellor" in Protestant Dictionary.

(*c*) *Rich* v. *Bushnell* (1827), 4 Hagg. 164. *And see* DILAPIDATIONS.

(*d*) Prid. Ch. 91.

(*e*) *Morley* v. *Leacroft*, [1896] P. 92.

(*f*) See *Neville* v. *Kirby*, [1898] P. 160.

(*g*) *Re London County Council* (1901), 84 L. T. 808.

(*h*) *St. Barnabas* (1909), 25 T. L. R. 571; and choir vestry added, *St. Margaret*, [1909] P. 310.

(*i*) The "chief seat" is not confined to a single seat for the rector himself. *Stileman-Gibbard* v. *Wilkinson*, [1897] 1 Q. B. 749.

are generally in the disposition of the ordinary (*j*). The parishioners are entitled to the use of the chancel for holy communion and marriages (*k*), and also it would seem, if necessary, for morning and evening prayer (*l*).

The minister has a peculiar right to go in and out of the chancel, notwithstanding the rights of a lay rector, except in a few cases where the chancel forms a private chapel (*m*). A person may be entitled to the exclusive and perpetual use of the chancel on the ground of "immemorial" use and occupation coupled with reparation, notwithstanding that the freehold might not be in the person prescribing, and although the estate and house to which the chancel was appendant might not be situate in the parish (*n*). The lay rector is not entitled as of right to make a vault or affix tablets in the chancel without the leave of the ordinary, and he must satisfy him that a faculty for such purposes will not interfere with the rights of the vicar and parishioners. The vicar, on the other hand, has not an absolute veto, nor has he any common law right to fees for interments or tablets in the chancel. If there be a custom to that effect it must be strictly proved (*o*).

CHANCEL SCREENS are not illegal, but are objectionable if they tend to emphasize the obsolete distinction between the chancel (*q. v.*) and the body of the church, and to prevent the congregation from hearing and seeing. A faculty will, however, probably be granted, provided there are no gates to it, and it does not make an unusual and marked separation between chancel and nave. The matter is one for the discretion of the Court (*p*). Faculties have been granted for chancel gates in special cases on the ground of utility (*q*).

(*j*) L. R. 4 P. D. 114. *And see* PEWS.

(*k*) *Rich* v. *Bushnell* (1827), 4 Hagg. 164. *And see* DILAPIDATIONS.

(*l*) Rubric.

(*m*) *Griffin* v. *Deighton* (1864), 33 L. J. Q. B. 181. *And see* CHAPEL.

(*n*) *Churton* v. *Frewin* (1866), L. R. 2 Eq. 634. *And see* PEWS.

(*o*) *Rich* v. *Bushnell, ubi sup. And see* VICAR.

(*p*) *Bradford* v. *Fry* (1878), 4 P. D. 106; *Re St. Augustine, ibid.* 111; *Re Paignton*, [1905] P. 111.

(*q*) *Re St. Agnes* (1885), 11 P. D. 1; *St. John* (1888), Tristram, 67; *St.*

If there are any panels on the screen they should be decently painted, but not have any pictures on them (*p*).

The screen must not be surmounted with the Crucifix and images of Mary and John, so as to correspond identically with the old rood (*r*).

CHANCELLOR, Diocesan, is the judge of the Consistory Court (*q. v.*). Chancellors, commissaries, official scribes or registrars are appointed by the King or by archbishops, bishops, archdeacons, or other persons having authority under the King (*s*). The appointment is made by letters patent under the seal of the appointor, and is usually for the life of the grantee (*t*).

When a person is appointed chancellor by a bishop, the dean and chapter confirm, and thereupon the chancellor has a freehold for life (*t*) on the terms of the patent, and subject to due qualification (*u*).

The office of chancellor may be held by a layman or clergyman provided he is sufficiently learned; usually a barrister is appointed. In the Romish Church chancellors were always in holy orders (*s*).

He must be twenty-six years of age, and learned and practised in the civil and ecclesiastical laws, and at the least a Master of Arts or Bachelor of Law. There are certain oaths or declarations required of them. They may not appoint a substitute or surrogate, except he be a grave minister and a graduate, or a licensed public preacher beneficed in the neighbourhood of the Court, or if a layman, similarly qualified as above, under penalty for both parties of three months' suspension (*x*).

James', [1894] P. 256; *St. Peter's*, [1894] P. 350; *Re Paignton*, [1905] P. 111.

(*r*) *Re Paignton*, [1905] P. 111; *St. John, Clevedon*, [1909] P. 6; *St. Paul*, [1909] P. 245. *And see* CRUCIFIX.

(*s*) 37 Hen. 8, c. 17, see s. 4 (now repealed).

(*t*) Godolphin, 83.

(*u*) *Dr. Sutton's case* (1627), Litt. 22; *Jones* v. *Llandaff* (1693), 4 Mod. 27; 12 Mod. 47.

(*x*) Cans. 127 and 128. In the Church of Rome these officials were always in holy orders, but since the abolition of the canon law at the Reformation laymen have always been held eligible. See 37 Hen. 8, c. 17, which only expressly mentions

The form of the chancellor's patent varies in different dioceses (*y*). In about one-half of the dioceses the bishop has reserved the right to exercise his ordinary jurisdiction by himself, or in conjunction with his chancellor, in as ample a manner as if the grant had not been made. Such reservations are, of course, illegal if in conflict with the statute law, as, for example, the Clergy Discipline Act, 1892 (*z*).

It has been held that the chancellor's jurisdiction depends on the terms of his patent (*a*). Subject thereto he is an independent King's judge, and cannot be controlled by the bishop, hence a bishop can institute a civil suit in the diocesan court (*b*).

If a chancellor exceeds his jurisdiction he is liable to prohibition (*q. v.*). He is paid by fees, which in some cases are regulated by statute (*c*). His office is not saleable (*d*). In dignity a chancellor is said to rank next to the bishop (*e*).

Under the Clergy Discipline Act, 1892, the bishop may appoint a deputy-chancellor, who must be a barrister of not less than seven years' standing or the holder of a judicial appointment (*f*). (*See* CLERGY DISCIPLINE ACT.)

CHANCELLOR, Lord High, was formerly often an ecclesiastic, but now must be a barrister. He usually presides in the Judicial Committee of the Privy Council. He acts as visitor on behalf of the sovereign, and has a large number of livings in his gift. A Roman Catholic cannot hold the office in England, but in Ireland it is tenable without reference to belief (*g*).

doctors of law, but does not declare other laymen ineligible.

(*y*) See forms in Eccl. Comm. Report, 1883, p. 659 *et seq.*

(*z*) 55 & 56 Vict. c. 32, s. 2 (e).

(*a*) *Rex* v. *Tristram*, [1902] 1 K. B. 816.

(*b*) *Ex parte Medwin* (1853), 1 E. & B. 609.

(*c*) *See* FEES.

(*d*) *Trevor's case* (1611), 12 Co. Rep. 78, where it is said that an ecclesiastical judge has power to commit the person excommunicate to the devil. 5 & 6 Edw. 6, c. 16.

(*e*) See authorities cited under DEAN.

(*f*) 55 & 56 Vict. c. 32, s. 10 (5); as to meaning of "judicial appointment," see s. 12.

(*g*) *See* DISSENTERS. The bill brought in in 1891 for throwing open the Lord Chancellorship to Roman Catholics did not pass.

CHANCERY, Court of, York, is the provincial Court of the Archbishop of York. It has jurisdiction to hear a suit against a clergyman beneficed in the province of York, although the offence has been committed without the limits of the province (*h*). (*See* ARCHES.)

CHAPELS are of two kinds: (1) forming part of a church; (2) places of worship erected in a parish in addition to the parish church. Chapels of the latter kind are irregularities in the ecclesiastical system. They are private or public, and may be either consecrated or unconsecrated.

Side chapels (in a church) should be separated from the body of the church by trellis work with gates or otherwise, so as to indicate that it is in ecclesiastical law a side chapel intended for use as such when the chancel or nave of the church is not used for service. Sometimes a second Lord's table is sanctioned therein (*i*). As, however, the communion table is required by law to be easily movable, and may be moved without a faculty, the simplest plan is to move the table into the aisle, if a small congregation can thereby be more conveniently provided for (*k*).

Private chapels are such as belong to persons of rank or particular institutions, as colleges, schools, hospitals, asylums, or public or charitable institutions, as workhouses, &c. A service in a private chapel is not necessarily a "private" service (*l*).

By the Private Chapels Act, 1871 (*m*), the bishop may license a clergyman to serve a private chapel, whether consecrated or unconsecrated, and administer therein the sacrament of the Lord's Supper and perform such other offices (except solemnization of marriage) as shall be specified in the licence, and the bishop has power to revoke the licence at any time (sect. 1). The status of such minister, so far as his chapelry is concerned, is quite independent of the incum-

(*h*) *Noble* v. *Ahier* (1886), 11 P. D. 158.
(*i*) *See* LORD'S TABLE.
(*k*) *See* LORD'S TABLE.
(*l*) *See* CONGREGATION.
(*m*) 34 & 35 Vict. c. 66.

bent of the parish, and neither of them must interfere with the other (sect. 2). Also the offertory and alms collected at such chapel is to be disposed of as the minister thereof shall determine, subject to the direction of the ordinary (sect. 3).

Sometimes part of a church is used as a private chapel, *e.g.*, at Arundel, what would be the chancel of the parish church was formerly the private chapel, and is now the private property of the Duke of Norfolk. Other instances are the nave at Carlisle, the south transept at Chester, and the Lady Chapel at Ely (*n*).

Public chapels are generally divided into chapels of ease and proprietary chapels, though they really include such places of worship as Westminster Abbey, St. George's, Windsor, and the Chapels Royal. (*See* VISITATION.) They may be either consecrated or unconsecrated. Chapels of ease are so called because built in aid of the original church. In some cases, however, they seem to have been coeval with and independent of it. In some chapels of ease the sacraments and burials are performed, in others divine worship only. But in all cases the right of nomination to them is in the incumbent, unless parted with by agreement between himself, the patron, and ordinary; also the inhabitants retain the right of resorting to the parish church, and remain liable to any parochial burdens which may exist (*o*). Proprietary chapels are chapels of ease of a new kind. They are the property of private individuals, who have erected them for the purpose of supplying the legitimate needs of a district. A proprietary chapel is perfectly anomalous, it is a thing unknown to the constitution of our Church, and in our ecclesiastical establishment. It can possess no parochial rights, and the exercise of any such rights would be a mere usurpation in the eye of the law (*p*). The minister appointed to such chapel must be licensed by the bishop, and the con-

(*n*) For a case in which the distinction between a public consecrated church and a domestic oratory is discussed at length see *Nevill* v. *Studdy* (1906), 94 L. T. 391.

(*o*) 2 Ste. Com. 778.

(*p*) *Moysey* v. *Hillcoat* (1828), 2 Hagg. p. 46. *And see* ALMS.

sent of the incumbent of the parish must be obtained (*q*). It is said that in some cases proprietary chapels are set up with a view to profit simply; but with the powers vested in the bishop and parish incumbent, this would seem to be impossible. If the chapel is unconsecrated, the proprietor may refuse to admit any person during the celebration of divine worship, and may charge for admission (*r*), and if he finds he cannot carry it on for want of funds, may close it at any time. Twelve or more householders in any parish may also start a proprietary chapel under the provisions of 5 Geo. 4, c. 103. This is usually called a subscription church. In many cases, chapels of ease and proprietary chapels form a nucleus for a new parish.

No minister of a chapel, whether public or private, may alter the services or transgress the ecclesiastical law (*s*).

No prosecution is now maintainable against any congregation or assembly meeting for religious worship in a private dwelling-house, or a building not usually appropriated for religious worship (*t*).

A chapel may be licensed for the solemnization of marriages. The stamp duty on the licence is 10*s*. (*u*).

As to cemetery chapels, *see* CHURCHYARDS, &c.

CHAPLAIN is he that performs divine service in a chapel, and therefore is commonly used for him that depends upon the King or other man of worth for the instruction of him and his family, the reading of prayers, and preaching in his private house, where usually they have a chapel for that purpose (*x*). The Royal Chaplains in England are ministers of the Church of England (Episcopal), and in Scotland of the Church of Scotland (Presbyterian). An archbishop or duke is said to be entitled to six private chaplains, a marquis or earl five, a viscount or bishop four, a Lord Chancellor or a

(*q*) *See* CLERGY.
(*r*) *Bosanquet* v. *Heath* (1860), 9 W. R. 35; 3 L. T. 290.
(*s*) *See* CLERGY.
(*t*) 18 & 19 Vict. c. 86, s. 1.
(*u*) 54 & 55 Vict. c. 39.
(*x*) Termes de la ley.

baron three, and various other personages two or one each (*y*).

The stamp duty on the licence to hold office of chaplain is 10*s*. (*z*). His stipend is in some cases assignable (*a*).

It is customary for a nobleman's chaplain to wear a broad black tippet called the chaplain's scarf (*b*).

CHAPTER is a congregation of canons and prebendaries of a cathedral church usually presided over by a dean (*c*).

Chapters are corporations and are of two kinds, the "general chapter" and the "close chapter," the latter comprising the dean and the "residentiaries" only. At Hereford, the close chapter has the exclusive management of the capitular property, though the general chapter is convened for the receipt of the royal *congé d'élire*, the election of a bishop and proctors in convocation, and the installation of a dean and any other dignitary (*d*). The chapter is so called because it is "as a head" advising the bishop in many things when the see is full, and anciently ruling and governing the diocese when the see was vacant (*e*). Now the dean and chapter only become spiritual guardians in a vacancy of an archiepiscopal see; in the case of an ordinary see the archbishop takes over the guardianship. The dean and chapter of Durham, however, always dispute this right with the Archbishop of York. Generally speaking, all deans and chapters are subject to the visitation of the bishop *jure ordinario*, and of the archbishop *jure metropolitico*, but there are exceptions in the case of peculiars (*q. v.*). Formerly, the visitatorial power of the bishop enabled him to pronounce sentence of deprivation

(*y*) See 21 Hen. 8, c. 13, now repealed.

(*z*) 54 & 55 Vict. c. 39.

(*a*) *See* BANKRUPTCY.

(*b*) As to chaplains of the House of Commons, see May's Parliamentary Practice. *And see* ARMY, CEMETERY, LUNATIC ASYLUM, NAVY, PRISON, and WORKHOUSE CHAPLAINS.

(*c*) Godolphin, 56; 4 & 5 Vict. c. 39, s. 16; 6 & 7 Vict. c 77, s. 4; 50 & 51 Vict. c. 12, ss. 2, 10; Watson, 855. There is no dean of Sodor and Man, or in some of the new dioceses.

(*d*) *Queen* v. *Dean of Hereford* (1870), L. R. 5 Q. B. 199; *Randolph* v. *Milman* (1868), L. R. 4 C. P. 107.

(*e*) Termes de la ley; and for the primitive church, see Hatch's Bampton Lectures.

against an offending member of the chapter, but since the Church Discipline Act, 1840, he must proceed as in the case of any other clergyman (*f*). But this Act leaves untouched all other power which the bishop might previously have exercised in his visitation. Thus, he may make orders binding on the dean and chapter (subject to appeal), and *primâ facie* may correct everything that is contrary to law, and the structure and fabric of the cathedral church is not excepted from his jurisdiction (*g*). The dean and chapter for certain purposes (*h*) form "a court," from which an appeal lies to the archbishop and probably to the Privy Council (*i*). The chapter has the general control of the cathedral and certain other powers and patronage (*k*).

CHARITIES. Charitable purposes are those mentioned in the preamble to 43 Eliz. c. 4, or which come within the spirit of that preamble, *e.g.*, the relief of the poor and sick, the advancement of learning and religion, and purposes of general public utility. In short, every public trust is a charitable trust (*l*).

In making a gift to a charity the rule against perpetuities may be broken. The gift may be either by deed or will, and may now be of land as well as personalty, subject to certain restrictions under the Mortmain Acts, 1888 and 1891 (*m*).

As a general rule gifts for church or religious purposes, if of a public character, are good charitable gifts. Also gifts to institutions formed for the promotion of religion, *e.g.*, the Church Missionary Society and the Society for Promoting Christian Knowledge (*n*), the Church Pastoral Aid Society in England, and the Spiritual Aid Society in Ireland (*o*), also institutions of the type of the Pro-

(*f*) *Dean of York's case* (1841), 2 Q. B. 1.

(*g*) *Boyd* v. *Philpotts* (1875), L. R. 6 P. C. 435.

(*h*) *See* VICAR CHORAL.

(*i*) *R.* v. *D. & C. of Hereford* (1897), C. A. 13 T. R. 374.

(*k*) See *R.* v. *Chester* (1850), 15 Q. B. 513; *R.* v. *Rochester* (1851), 17 Q. B. 1; 48 & 49 Vict. c. 54, s. 4; 3 & 4 Vict. c. 113, s. 44.

(*l*) Tudor on Charitable Trusts, 3rd ed. by Bristowe & Cook, p. 2.

(*m*) As to which, *see* MORTMAIN.

(*n*) *Re Clergy Soc.* (1856), 2 K. & J. 615.

(*o*) *Re Maguire* (1870), L. R. 9 Eq. 632.

testant Alliance and the Church Association formed for the maintenance of the principles of the Reformation (*p*). Also gifts for the construction or repair of buildings used for religious purposes (*q*). Formerly, gifts for religious purposes to Papist or Protestant Dissenters or Jews, were void as superstitious, but now (subject as stated below) it makes no difference that the gift is for the advancement of religious doctrines differing from those of the Established Church, provided they are not subversive of all religion and all morality (*r*). Also gifts for spreading particular religious views within the Church of England are good, *e.g.*, by founding new advowsons on condition that the incumbent shall always be an Evangelical, but it would seem that no condition can be attached on the transfer of an advowson already in existence (*s*). The proceeds of sale of such an advowson may, of course, be devoted to the spread of special religious views.

But a bequest for the maintenance and repair of a private chapel or private monuments (except in churches) is bad, though the object can be attained in another way (*t*). Also gifts to individual clergymen, even when they are left to be selected by another person, are not charitable, nor gifts intended for the individual members of a religious community, nor gifts intended in any way for the private benefit or solace of the testator or his family. Also a gift for the benefit of a religious community, the object of the members of which is merely the working out of their own salvation, is not charitable (*u*).

A gift for maintaining the "worship of God" or "godly learning," *without more*, will be considered as given to the Established Church (*x*).

Certain rites and ceremonies are regarded as superstitious,

(*p*) *Re Delmar*, [1897] 2 Ch. 163.
(*q*) *Re Manser*, [1905] 1 Ch. 68; and cases there cited.
(*r*) *Per* Lord Romilly, *Thornton* v. *Howe* (1862), 31 Beav. at p. 20. See *Re Delmar*, [1897] 2 Ch. 163.
(*s*) *Re Hunter*, [1899] A. C. 309.
(*t*) *See* MONUMENTS.
(*u*) *Cocks* v. *Manners* (1871), L. R. 12 Eq. 574, p. 585.
(*x*) *Att.-Gen.* v. *Pearson* (1817), 3 Mer. 409; *Re Ilminster School* (1858), 2 De G. & J. 535, cited Lewin on Trusts.

and gifts to maintain them are consequently void, *e.g.*, prayers for the soul of a deceased person (*y*). These might also be void as being for the private benefit of the person.

Also a gift to inculcate the doctrine of the supremacy of the Pope in ecclesiastical matters is contrary to the policy of the law and in the nature of a superstitious use (*z*).

The Charity Commissioners have now very great powers as to the management of charities. Applications may be made to them for a scheme, and where such an application has once been made under the Charitable Trusts Act, 1860, their jurisdiction attaches absolutely (*a*).

By the Charitable Trusts (Recovery) Act, 1891 (*b*), powers have been vested in the Charity Commissioners for facilitating the recovery of payments owing to charities. (*See* TRUSTEES.)

Under the Local Government Act, 1894, an ecclesiastical charity is defined to be a charity the endowment whereof is held for the benefit of a particular church (*i.e.*, religious society) or denomination, or of any (*i.e.*, some or all) members thereof as such (*i.e.*, in their character of members) (*c*).

CHASUBLE (*Casula*) was originally an out-door hooded overcoat in everyday wear, afterwards retained as an ecclesiastical vestment. It was used in the Romish Church (and for a short time under the transition Prayer Book, the First of Edward) at the celebration of the mass, and is intimately associated with the doctrines of the sacrifice of the mass and transubstantiation. When these doctrines were discarded the vestment went with it. After being obsolete for cen-

(*y*) 1 Edw. 6, c. 14. See *West* v. *Shuttleworth* (1835), 2 My. & K. 697; *Yeap, &c.* v. *Ong* (1875), L. R. 6 P. C. 396. They are now valid in Ireland, subject to appeal, 7 Ir. Eq. R. 17 and 24, n.; *O'Hanlon* v. *Logue*, [1906] 1 I. R. 247; and in some colonies, *e.g.*, Victoria, *Re Elliott*, (1891) W. N. 9.

(*z*) *De Themmines* v. *De Bonneval* (1828), 5 Russ. 288.

(*a*) *Re Poor's Lands*, [1891] 3 Ch. 400.

(*b*) 54 Vict. c. 17.

(*c*) 56 & 57 Vict. c. 73, s. 75, sub-s. 2; *Re Ross's Charity*; *Re Perry Almshouses*, in C. A., [1899] 1 Ch. 21. *See* TRUSTEES.

turies an attempt was made to re-introduce the chasuble (and the corresponding doctrine) into the English Church, but it has been declared to be illegal by the highest ecclesiastical tribunal, and to wear it involves imprisonment and deprivation (*d*).

The chasuble in its ancient form, if laid flat upon the ground, would have appeared like an oval, more or less pointed, with a hole in the centre, through which the head of the officiant was passed. It fell down before and behind about as low as the knees, sloping off to a point, and covered the arms about as low as the elbows. In modern times it is rounded before and behind, and cut to the shoulder so as to give full play to the arms. It had always a rich border, sometimes also a collar (*e*).

CHIMERE. (*See* ROCHET.)

CHRISTIANITY is no longer, in the old sense, "parcel of the Laws of England" (*f*). The term "Christian service" may include every religious service used by any church, denomination, or person professing to be Christian (*g*). (*See* CHURCH.)

CHURCH. The definition of the Universal Church, or as it is also called, "the visible Church of Christ," "Christ's Holy Catholic Church," and "the true Church" (*h*), is thus given in Article 19, "The visible Church of Christ is a congregation of faithful men in which the pure Word of God is preached and the sacraments be duly ministered according to Christ's ordinance, in all those things that of necessity are requisite to the same." The Catholic Church is also described in the Bidding Prayer (can. 55) as "the whole congregation of Christian people dispersed throughout the

(*d*) *See* COPE and VESTMENTS.
(*e*) Brice on Public Worship, p. 208.
(*f*) *Reg.* v. *Ramsay and Foote* (1883), 48 L. T. 733; *Taylor's case* (1687), Ventris, 293. *See* BLASPHEMY.
(*g*) 43 & 44 Vict. c. 41, s. 6.
(*h*) See definition in Homily for Whit Sunday.

whole world," and apparently in the Prayer Book as "all those who profess and call themselves Christians" (*i*).

The Church of England considers the Churches of Jerusalem, Alexandria, Antioch, and Rome to have erred not only in their living and manner of ceremonies, but also in matters of Faith (*k*). It specially directs prayers for the Church of Scotland, which is Presbyterian (*l*). (*See* ENGLAND, CHURCH OF.)

Originally, the vast majority of Christians were included in the Greek Church (*q. v.*), which was a federation of autonomous churches. It is a fundamental principle of the Church of England that there is only *one* Church (*m*) of Christ, though it may have many divisions.

The total number of Christians is estimated to be about 420,000,000, or about one-third of the population of the globe. Of these, Roman Catholics comprise about 200,000,000, Orthodox or Greek Church 80,000,000, other Eastern churches 10,000,000, and Protestants 130,000,000. Of Protestants, over 30,000,000 are Wesleyans, about 30,000,000 Lutherans, 25,000,000 Anglicans, 15,000,000 Baptists, 13,000,000 Presbyterians, 10,000,000 Congregationalists, 2,000,000 Unitarians, and 5,000,000 Salvation Army and minor sects.

CHURCHING (formerly Purification) of Women. This rite is intended for *all* women safely delivered in child-birth, and therefore it cannot be refused because the child is illegitimate (*n*), or the mother is a dissenter (*o*).

The woman must be decently (*i.e.*, neatly) apparelled (*p*), but a white veil cannot be enforced (*q*). The time and the

(*i*) Prayer for all conditions of men. This may, however, be merely a prayer for the conversion of Greeks, Romans and other sects outside the Anglican pale.

(*k*) Art. 19.

(*l*) Bidding Prayer, can. 55.

(*m*) See Art. 19 and title page of Prayer Book.

(*n*) *R.* v. *Benson*, cited Prideaux on Churchwardens, p. 474.

(*o*) See letter in *Guardian*, Sept. 5, 1877, cited Urlin's Guide. *And see* BURIAL, and *Kemp* v. *Wickes* there cited.

(*p*) Rubric.

(*q*) Stephens on Prayer Book, p. 1755, where *Shipden's case* (1622),

place in the church for the ceremony seem to be very much in the discretion of the incumbent, subject to the directions of the ordinary.

The whole service (except the final prayer and a few versicles) is directed to be performed by a "priest," but as to this, *see* ABSOLUTION.

The "usual time" is about a month after delivery, but there is no hard and fast rule (*r*).

CHURCHWARDENS. They are a corporation (or rather quasi-corporation) (*s*) entrusted with the care and arrangement of the goods belonging to the church, which they are to order for the best advantage of the parishioners; they are likewise enabled to take goods for the benefit of the church, but cannot dispose of them without the consent of the parishioners (*t*). They cannot hold lands, except in London, where the customs are peculiar (*u*). They have such a special property in the organ, bells, parish books, bible, chalice, surplice, &c., that for the taking away or damage done to them, they may bring an action, and therefore the parson cannot sue in the spiritual court (*x*). Though one of the chief duties of churchwardens is said to be the care and repair of the fabric of the church (*y*), they have no sort of interest therein, nor in the churchyard, and if any damage is done thereto, the incumbent only has the right of action (*z*). They also cannot set up monuments without the consent of either rector or ordinary (*a*). One

Palmer, 296, is discussed. There seems to have been no continuous custom. And see Whitgift, Works, 2, 564.

(*r*) See Wheatley on P. B.

(*s*) "They are in the city of London a corporation for the purpose of holding land, and for the purpose of the devolution of property, but I am not aware that they are a corporation in the sense that they are a corporate entity—that is to say, a person in point of law—nor that they can sue or be sued by any corporate name"; *per* Lindley, M.R., in *Fell* v. *Official Trustee, &c.*, [1898] 2 Ch. 51; and see also judgments of Rigby and Collins, L.JJ., *ibid.*

(*t*) Bacon, Abg. See *Wrench* v. *Lord* (1837), 4 Scott, 381.

(*u*) Steer's Par. Law, p. 115, and see Pulling's Laws of London.

(*x*) Bac. Abg.

(*y*) Can. 85.

(*z*) 1 Bla. Com. 395.

(*a*) *Beckwith* v. *Harding* (1818), 1 B. & Al. 508.

of two churchwardens cannot safely act alone even in matters which must be beneficial to the parish (*b*), but it is quite competent for him to promote a suit in opposition to his co-churchwarden (*c*).

Duties. Their principal duties are to see to the making of church rates (*q. v.*), *i.e.*, the levying of voluntary contributions for church purposes; in some cases to collect pew rents and hand them over to the minister (*d*); to collect alms (*q. v.*), to arrange for the seating of the congregation (*e*), to enforce orderly behaviour in church and churchyard during service, to take care of a benefice during a vacancy (*f*), to receive and duly publish the bishop's notice under the Benefices Act, 1898, that he proposes to admit a new incumbent (*g*), and to make presentments or reports to the bishop in the event of misconduct by the clergy. Formerly, they had also to make presentment as to the parishioners generally, but this is now obsolete (*h*). They are also entitled to ask a strange clergyman officiating to produce his letters of orders.

For the purpose of maintaining order during divine service, they (and perhaps also private individuals) may eject disturbers, and take off a person's hat, if on being asked he refuses to remove it, and may whip boys playing in church (*i*) during or immediately before service (*k*); but such a course cannot now be recommended. But in the event of the minister wearing illegal vestments or committing other breaches of the ecclesiastical law, their duty would seem to be simply to report the conduct to the bishop, or take the proper steps under the Church Discipline or Public Worship Regulation Acts (*q. v.*).

(*b*) *Ritchings* v. *Cordingley* (1868), L. R. 3 A. & E. 117; *Howell* v. *Holdroyd*, [1897] P. 206.

(*c*) *Bradford* v. *Fry* (1878), 4 P. D. 93.

(*d*) *Lloyd* v. *Burrup* (1868), L. R. 4 Ex. 63. *And see* PEW RENTS.

(*e*) *See* PEWS.

(*f*) *See* BENEFICE.

(*g*) 61 & 62 Vict. c. 48, s. 2 (2). *See* INSTITUTION.

(*h*) Cans. 115, 116 and 117. And see Public Worship Regulation Act.

(*i*) *Burton* v. *Henson* (1842), 10 M. & W. 108, and canons 19, 85, 111. *And see* BRAWLING.

(*k*) *Worth* v. *Terrington* (1845), 13 M. & W. 781.

When the churchwardens have been admitted to the office, they should survey the church and churchyard and inspect whatever else is in their custody as churchwardens, and take account of repairs wanted and of arrears due, and estimate as nearly as they can (with the assistance of competent persons, as builders, &c., where expedient) the probable amount both of such repairs and of the current expenses required for the decent performance of public worship for the year. They are then to call a vestry together, and lay before it their estimates and propose and exert themselves to obtain an adequate rate, and, when obtained, to collect it (*l*).

In parishes maintaining their own poor they are *ex officio* overseers (*m*), and the two offices may be held together in other parishes (*n*). A churchwarden has no right forcibly to prevent an inhabitant of the parish or district from entering a church for the purpose of attending service on the ground that, *in his opinion*, such person could not be conveniently accommodated in the church, and this rule would seem to apply even if the church were really already crowded to suffocation (*o*). Churchwardens have a right of access to the church and vestry at proper seasons and for proper purposes (*p*); thus, a minister has no right to exclude a churchwarden who wishes to enter the vestry for the purpose of assisting in counting a collection for church expenses (*q*). But churchwardens are not entitled to the custody of the keys of the church, and they cannot remove ornaments which have been illegally placed there without the consent of the ordinary (*r*). They have no rights over a proprietary chapel (*q. v.*).

They are bound to render accounts annually to the vestry, and hand over balances at the end of their term of office (*s*).

(*l*) Lond. Dio. Book, 1890, p. 282.
(*m*) 43 Eliz. c. 2, s. 1.
(*n*) 29 & 30 Vict. c. 113, s. 12.
(*o*) *Taylor* v. *Timson* (1888), 20 Q. B. D. 671.
(*p*) *R.* v. *O'Neill* (1867), 31 J. P. 742.
(*q*) *Howell* v. *Holdroyd*, [1897] P. 205.
(*r*) *Ritchings* v. *Cordingley, ubi sup.*; *Davey* v. *Hinde*, [1901] P. 95. *And see* PARISH CHURCH.
(*s*) Can. 89. See 7 & 8 Vict. c. 101, s. 32, and Glen's Poor Law Statutes.

They may be removed if they are guilty of misbehaviour, negligence, or improvidence, and the mode of removal seems to be by complaint of the vestry or minister to the bishop (*t*).

As to *ordinary* repairs, the churchwardens need not take the consent of the parishioners, for, though they be indiscreet or over-expensive in such repairs, they shall be reimbursed whatever they can prove they have truly and really expended or rendered themselves liable for without any private profit to themselves, because the parish have made them their trustees (*u*), *i.e.*, of course, assuming that there are any funds available. If the vestry orders certain work to be done, the churchwardens are not the proper persons to sue for payment (*x*), and if a churchwarden orders goods, *e.g.*, coal, his successors are not bound to pay for it (*y*).

Election. There are generally two elected for each parish, but there may be one only by custom. Usually one is elected by the incumbent and one by the parishioners, but the custom varies (*z*). Where there is no custom, it is said the canon law must be followed, and they must be chosen by the joint consent of minister and parishioners. If they cannot agree, then the minister (or his curate) is to choose one, and the parishioners another (*a*). Where the right of appointing exists in the parishioners, it is exercised in vestry (*q. v.*), and the parson should not interfere (*b*). The election of churchwardens and sidesmen is to take place yearly in Easter week (*c*), and they are to make a declaration before the ordinary at a visitation to be held as soon as possible after the election, that they will serve the office faithfully (*d*). Though chosen for a year only, they may be re-elected, and, it would seem, must continue in office till their successors are "sworn" (*c*). Fees amounting to 18*s.* are payable in

(*t*) 2 Addams, 130.
(*u*) Gib. 196; *R.* v. *Vestry of St. Mary, Islington* (1890), 25 Q. B. D. 523.
(*x*) *Klenck* v. *Farris* (1904), 68 J. P. 321.
(*y*) *Ellis* v. *Fox* (1904), L. T. 214.
(*z*) See L. R. 1 C. P. 748, and 1 App. C. 513; 5 P. D. 64.
(*a*) Can. 89; *R.* v. *Allan* (1872), L. R. 8 Q. B. 69.
(*b*) *Stoughton* v. *Reynolds* (1736), 2 Str. 1047. The minister cannot vote as a "parishioner" in this case. *Rex* v. *Salisbury*, [1901] 2 K. B. 225.
(*c*) Cans. 90 and 118.
(*d*) *See* OATH.

respect of any visitation, but the churchwardens are not liable to pay the registrar's, or, it would seem, any, fees out of their own pockets (*e*).

Who may be elected. As a general rule, all parishioners, however poor, except aliens, Jews, minors, lunatics, and felons, are eligible. It is very doubtful, however, whether a woman, or a dissenter of any kind, would be compelled to serve (*f*). A Roman Catholic is allowed to serve by deputy (*g*). In new parishes, under the recent Acts, the churchwardens must be members of the Church of England. The following persons are exempt:—Peers, members of parliament, sheriffs, acting justices of the peace, aldermen, clergymen, dissenting ministers (papist and protestant), practising barristers and solicitors, law court officers, practising physicians, surgeons, apothecaries, and dentists, officers in the army, navy and marines, though on half pay, serjeants, corporals, drummers, and privates, registrars of births, &c., officers of inland revenue, customs and post office, and parishioners living out of the parish, unless they carry on trade therein. It is essential to the eligibility of a parishioner that he should be "resident," and for this merely being rated is not sufficient; there must be some kind of occupation equivalent to actual residence (*h*). If a churchwarden during the continuance of his office ceases to reside in the parish, he does not *ipso facto* cease to be churchwarden, though it is a good ground for appointing another in his place (*i*).

It would seem that a parishioner has no right to inspect the churchwarden's books, unless he can show a special reason. It is not sufficient that the inspection is desired for the purpose of enabling the applicant to take part in the proceedings of the vestry (*k*). (*See* TRUSTEES.)

(*e*) *Veley* v. *Pertwee* (1870), L. R. 5 Q. B. 573.

(*f*) See *Adey* v. *Theobald* (1836), 1 Curt. 447.

(*g*) 31 Geo. 3, c. 32, s. 7.

(*h*) *R.* v. *Harding* (1889), 6 T. L. R. 54; *R.* v. *Cree*, [1892] 67 L. T. 556; *R.* v. *Townson* (1908), 91 L. T. 472.

(*i*) *Ganvill* v. *Utting* (1845), 9 Jur. 1081.

(*k*) *Reg.* v. *Daventry* (1859), 5 Jur. N. S. 940.

CHURCHYARDS, CEMETERIES, and BURIAL GROUNDS. The freehold of the churchyard belongs to the incumbent (*l*), but only as a kind of life tenant and subject to the parishioners' right of burial, and to various restrictions, *e.g.*, he may not turn cattle in so as to be a nuisance to the parishioners, nor remove monuments without the consent of the bishop (*m*), nor remove the soil, nor break down the churchyard wall, nor injure the freehold. If he does, the churchwardens can get an injunction (*n*). His freehold interest, as also that of a lay rector, is, however, sufficient to enable him to maintain an action in the High Court against a trespasser (*o*). When a churchyard is no longer used for burials, the incumbent's freehold interest is valueless (*p*).

Most of the privileges attaching to a church belong also to the churchyard, *e.g.*, protection from profane usage and brawling (*q*), and formerly the privilege of sanctuary (*q. v.*). Churchyards of cathedrals have the like privileges.

The incumbent is not bound to repair or fence in the churchyard. It must be done by voluntary subscriptions, as no compulsory rate can now be levied. Where there is a public path through the churchyard, it must be repaired at the expense of the parish, but not a churchway leading only to the church. A *faculty* is necessary and can be obtained for making new church paths, and all jurisdiction respecting them is vested in the Ecclesiastical Court (*r*). The churchwardens are the proper persons to see that the fences are properly repaired by the adjoining owners or otherwise (*s*). The cost of repairing disused burial grounds is paid out of

(*l*) Comyn's Dig. 2, 323; 21 Q. B. D. 238.

(*m*) *Wilson* v. *McMath* (1819), 3 Phill. 90.

(*n*) *Adlam* v. *Colthurst* (1867), 36 L. J. Ecc. 14; *Marriott* v. *Tarpley* (1838), 9 Sim. 279.

(*o*) *Batten* v. *Gedye* (1889), 41 Ch. D. 507.

(*p*) *Stebbing* v. *Metropolitan* (1870), L. R. 6 Q. B. 37.

(*q*) *See* BRAWLING, and can. 88.

(*r*) See *Batten* v. *Gedye* (1889), 41 Ch. D. at p. 515; *Rector, &c.*, [1896] P. 95; *St. John's, &c.*, [1898] P. 155. As to taking part of churchyard to widen public road, see *St. Nicholas* v. *Langton*, [1899] P. 19; *Re Bideford*, [1900] P. 314.

(*s*) Prid. Ch. p. 95.

the poor rate, upon the certificate of the burial board or churchwardens (*t*). A bequest for the repair of a churchyard is a good charitable gift, but for the repair of tombs or monuments in a churchyard is void, though the desired result can be attained in another way (*u*).

Sites not exceeding one acre may now be bought and conveyed to be used as a burial place under the Public Worship Sites Acts, 1873 and 1882 (*x*), and also for adding to existing churchyards under the Consecration of Churchyards Acts, 1867 and 1868. Forms of conveyance are given in these Acts (*y*). Under the Act of 1867, when the land is a gift, an exclusive right of burial may be reserved to the giver in a portion not exceeding one-sixth of the land, and a memorandum to that effect is to be written on the instrument of consecration and signed by the incumbent and churchwardens.

The form is as follows: "We declare the piece of land, &c., coloured on this plan to be the burial place of G. H., the giver of the land added to the churchyard of , his heirs and assigns" (s. 9). This memorandum operates as an exclusive right in perpetuity in the land which is the real estate of the giver, but it does not give the right to bury the body of any person not entitled to be buried in consecrated ground, and the bishop has the usual power of procuring the removal of any objectionable monumental inscription (s. 10). Such reserved piece of land can only be closed under a separate order in council (s. 11). A right of burial but not a freehold estate may also be granted under the Burial Act, 1852, s. 33, subject to such restrictions as the burial board think proper (*z*).

All existing churchyards are deemed to have been, and all

(*t*) 18 & 19 Vict. c. 128, s. 18; *R.* v. *Vestry of St. Mary* (1890), 25 Q. B. D. 523.

(*u*) *See* MONUMENTS.

(*x*) *See* PARISH CHURCH.

(*y*) 30 & 31 Vict. c. 133, s. 5; 36 & 37 Vict. c. 50, s. 4; *Re Baroness Bateman*, [1899] 1 Ch. 599.

(*z*) *McGough* v. *Lancaster* (1888), 21 Q. B. D. 323; and see *Ashby* v. *Harris* (1868), L. R. 3 C. P. 523; *Matthews* v. *Jeffrey* (1880), 6 Q. B. D. 290.

new ones must be, consecrated. This ceremony must be performed by the bishop (*a*). Additions to churchyards may be consecrated in a less formal way under the above-mentioned Acts of 1867 and 1868. When consecrated it cannot be unconsecrated except by Act of Parliament (*b*); and, therefore, formerly a faculty could not be obtained to convert a churchyard into a public garden, though the construction of footpaths in it for the convenience of parishioners, the planting of it with trees and flowers, the erection of gates and other minor alterations could be thus authorized (*c*). But now under the provisions of the Open Spaces Acts, 1877, 1881, 1887, and 1890, which apply to England, Wales, and Ireland, burial grounds may be made available for recreation grounds, provided that no sports or games shall be allowed unless the bishop (as to consecrated ground), or the body from whom the control is acquired (as to unconsecrated ground), shall expressly sanction such use thereof, and then conditions may be specified as to the extent or manner of such use. For these purposes any tombstone or monument may be removed from a disused burial ground after three months' notice has been given. Such notice must be by advertisements in newspapers, and on the door of the church, to the vestry clerk, and by post to near relatives. In the case of consecrated ground no faculty can be applied for until the expiration of one month after the appearance of the last of such advertisements, and the matter is then left entirely in the bishop's discretion (*d*).

No building can be erected upon a disused burial ground except for the purpose of enlarging a church, chapel, meeting house, or other place of worship, unless a faculty was obtained before 14th August, 1884, or the burial ground had been actually sold under an Act of Parliament prior to that date (*e*). The ecclesiastical commissioners have power, with

(*a*) *See* PARISH CHURCH.
(*b*) *Queen* v *Twiss* (1869), L. R. 4 Q. B. 412; *Re Plumstead*, [1895] P. 225.
(*c*) *Re St. George* (1876), 1 P. D. 311.
(*d*) 50 & 51 Vict. c. 32, ss. 2 and 3.
(*e*) 47 & 48 Vict. c. 72; *Trustees*

the consent of two justices, to alter or stop up paths and entrances in churchyards which may appear to them to be useless (*f*).

Closing. Under the Burial Acts, 1852 to 1871, burials may be discontinued in any part of the metropolis, or in any city or town, or within any other limits, either wholly or subject to qualifications, but in order to close the burial grounds of Jews, Quakers, or private persons, they must be expressly mentioned (*g*); and outside of the metropolis the consent of the Secretary of State must be obtained on each occasion. Private rights of interment (in family vaults, &c.) may be exercised, notwithstanding the order, by leave of the Secretary of State, unless the burial is prejudicial to health (*h*). The order itself frequently reserves the rights of parishioners (*i*). The Acts do not extend to certain cemeteries (*k*), nor to St. Paul's or Westminster Abbey (*l*). Notice is given in the "London Gazette," and posted on the doors of churches one month before the matter is taken into consideration by the Privy Council. Persons burying after the order is made are guilty of a misdemeanour (*m*).

New Burial Ground. In lieu of the closed burial ground a new one may be purchased, and a burial board formed for the purpose. In the metropolis, such new burial ground must not be within two miles thereof (*n*). It must be

of St. Saviour's (1886), 31 Ch. D. 412; *Re Ponsford*, [1894] 1 Ch. 454; *Re St. James*, [1899] P. 55; *London County Council* v. *Dundas*, [1904] P. 1; *Re Bosworth*, [1905] 2 K. B. 426. A band stand or any similar erection is a "building." *Att.-Gen.* v. *St. Pancras* (1894), 69 L. T. 627. The site of a church in which there have been interments is not a "disused burial ground." *Re Eccl. Commrs.*, [1895] 1 Ch. 702; *Att.-Gen.* v. *London*, [1896] 1 Ch. 541.

(*f*) 59 Geo. 3, c. 134, s. 39.

(*g*) 15 & 16 Vict. c. 85, ss. 2, 3; 16 & 17 Vict. c. 134, s. 17; *Slattery* v. *Naylor* (1888), 13 App. Cas. 446.

(*h*) 16 & 17 Vict. c. 134, s. 4.

(*i*) See *Re Sargent* (1890), 15 P. D. 168.

(*k*) 16 & 17 Vict. c. 134, s. 6.

(*l*) 15 & 16 Vict. c. 85, s. 8.

(*m*) As to disposal of unused and unconsecrated land bought for a burial ground, see *St. George* v. *Westminster, &c.*, [1910] A. C. 225 (H. L.); and erection of a public hall thereon, *Holy Trinity* (1909), 25 T. L. R. 570.

(*n*) *Ibid.* ss. 9 *et seq.* for details; ss. 10—42 and 44, 50—52 apply to all England by 16 & 17 Vict. c. 134, s. 7. See also all the Burial Acts, 1852—1900; and the Public Health Acts, 1875 and 1879, with all of which the Cemeteries Clauses Act, 1847, is incorporated.

divided into two parts, consecrated (*o*) and unconsecrated, subject to the approval of the Secretary of State; and if a chapel is built for churchmen, a chapel must also be built for dissenters, or the chapel must be used jointly. Also a chapel may be built which is not to be reserved for the exclusive use of any denomination (*p*). The consecrated part of the burial ground is to be deemed the burial ground of the parish or parishes for which it is provided, and the incumbent, sexton, and clerk must perform the same duties, and have the same rights as to fees, &c. (*q*), and the parishioners generally have the same rights as to sepulture as in the old churchyard; but the vestry or burial board, with the consent of the bishop, can revise the fees or substitute a fixed payment (*r*). Where there is one burial ground for two or more parishes, such arrangements as to burials and fees as may be approved by the majority or one-half of the incumbents shall be confirmed by the bishop and be binding on all the incumbents (*s*); but if the parishes have been divided under 6 & 7 Vict. c. 37, the burial board has a right to apportion the burial fees between them (*t*). If the bishop refuses to consecrate the burial ground, an appeal lies to the archbishop; but when the Secretary of State has certified that the necessary provisions have been complied with, the incumbent may bury, prior to the decision of the bishop or archbishop as to consecration (*u*). Where a burial ground has been provided under the Church Building Acts, provisions are made for its transfer to the burial board (*x*). Unconsecrated ground, maintained by a burial board and set apart for burial, may not be applied to any other purpose without the consent of the Local Government Board (*y*).

(*o*) See 63 & 64 Vict. c. 15, s. 1.
(*p*) 63 & 64 Vict. c. 15, s. 2.
(*q*) *Burial Board* v. *Thompson* (1871), L. R. 6 C. P. 445; *Rector of St. Martin's* (1870), L. R. 11 Eq. 23; *Stewart* v. *West Derby* (1886), 34 Ch. D. 314; *R.* v. *St. Marylebone*, [1895] 1 Q. B. 771; *Ward* v. *Portsmouth* (1898), 78 L. T. 255; *Young* v. *Kingston*, [1906] 1 K. B. 338; *Williams* v. *Briton*, [1905] 2 K. B. 565.
(*r*) 15 & 16 Vict. c. 85, s. 37; 63 & 64 Vict. c. 15, ss. 3, 5 and 7.
(*s*) 15 & 16 Vict. c. 85, s. 39.
(*t*) *White* v. *Burial Board for Norwood* (1885), 16 Q. B. D. 58.
(*u*) 20 & 21 Vict. c. 81, ss. 12, 13.
(*x*) *Ibid.* s. 7.
(*y*) 63 & 64 Vict. c. 15, s. 6.

Cemeteries may be provided by companies or private individuals. A local authority also can accept land and money for a cemetery, and acquire, construct, or maintain one (*z*). Although a new cemetery may come within 100 yards of a house, no burial can take place within that limit (*a*), and the distance is to be measured from the walls of the dwelling-house, not from its curtilage (*b*). It therefore follows that in the case of a burial ground of one acre a margin of about twelve acres has to be purchased on which no house can be built (*c*).

By the Cemetery Clauses Act, 1847, which may be incorporated into any special cemetery Act, a portion of the cemetery may be consecrated by the bishop, if he is satisfied with the title of the company, and the company must build a chapel within such consecrated portion according to a plan approved by the bishop, and appoint a chaplain (*d*).

There are special provisions for burial grounds for lunatics under the Lunacy Act, 1890.

Fees for erection of tombstones in churchyards depend on custom; in some parishes there is a fee payable to the parish as well as to the incumbent. In one case, the sum of eight guineas is mentioned as the fee for a flat stone (*e*).

In cemeteries and burial grounds there are, generally, fixed rules on the subject (*f*). Cemetery companies and parsons are rateable in respect of their beneficial occupation of cemeteries and churchyards (*g*). Burial grounds are not *ejusdem generis* with "churches, district churches, chapels, meeting houses," under sect. 1 of the Poor Rate Exemption Act, 1833 (*h*).

The statutory fees payable to the bishop's officials on the

(*z*) Public Health Acts, 1875 and 1879.

(*a*) 18 & 19 Vict. c. 128, s. 9; *Cowley* v. *Byas* (1877), 5 Ch. D. 944.

(*b*) *Wright* v. *Wallasey* (1887), 18 Q. B. D. 783.

(*c*) *Godden* v. *Hythe*, [1906] 2 Ch. 270. See *per* Vaughan Williams, L. J., at p. 278.

(*d*) 10 & 11 Vict. c. 65, ss. 11, 23 *et seq.* *And see* CEMETERY CHAPLAIN.

(*e*) *Bordin* v. *Calcott* (1789), 1 Hag. Cons. 17.

(*f*) 63 & 64 Vict. c. 15, s. 3.

(*g*) *Winstanley* v. *North Manchester, &c.*, [1910] A. C. 7 (H. L.).

(*h*) *Ibid.*, [1908] 1 K. B. at p. 857.

consecration of a burial ground amount to about 10*l*. 10*s*. (*i*). As to fees on burials, *see* BURIAL.

CHURCH DISCIPLINE ACT, 1840. Under this Act any man may be a complainant, no matter where resident, and no matter whether churchman or not (*k*), and may proceed against any clerk in holy orders with respect to any offence against the laws ecclesiastical or any scandal or evil report as having offended against the said laws (*l*), except in cases which come within the purview of the Clergy Discipline Act, 1892 (*m*). Where the offence is a criminal one of a very grave character, it ought not to be investigated by an Ecclesiastical Court until the clergyman has been tried and convicted by a criminal court of competent jurisdiction (*n*). The procedure is to apply to the bishop to issue a commission of inquiry, and it has been held by the House of Lords that it is in the absolute discretion of the bishop whether he will issue such commission or not (*o*). The bishop must give the accused party fourteen days' notice of his intention to issue the commission, with an intimation of the nature of the accusation.

The commission, if issued, consists of five persons, one of whom must be the bishop's vicar-general, or an archdeacon or a rural dean within the diocese (sect. 3).

The commissioners, or any three of them, then inquire and report to the bishop, who is empowered, with the consent of all parties, to pronounce sentence without further proceedings (sect. 6); otherwise, if the commissioners report that there is sufficient *primâ facie* ground, proceedings may be instituted and articles filed (sects. 7, 8, 9), and the case will be tried before the bishop (or his commissary (sect. 12)) and three assessors (sect. 11), unless the case is sent by letters of

(*i*) *London Gazette*, 1908, p. 7303. *See* FEES.

(*k*) *Per* Lord Penzance, *Julius* v. *Bishop of Oxford* (1880), 5 App. Cas. 234.

(*l*) 3 & 4 Vict. c. 86, s. 3.

(*m*) 55 & 56 Vict. c. 32; *Hussey* v. *Radcliffe* (1859), 5 Jur. N. S. 1014.

(*n*) *Re A. B.* (1886), 11 P. D. 56.

(*o*) *Julius* v. *Bishop of Oxford*, *ubi sup.*

request (*q. v.*) to the Court of Appeal of the province (*p*) (sect. 13). Pending suit, the bishop may inhibit the accused party from performing the services of the church, but in such case, the accused party, if an incumbent, may nominate a substitute to be approved by the bishop, who may assign to him the stipend required by law for the curacy of the church, and provide for the payment of it by sequestration, if necessary (sect. 14). An appeal (*q. v.*) lies to the provincial Court of Appeal and thence to the King in Council. The proceedings must be commenced (*i.e.*, citation served on accused to appear before a competent Court (*q*)) within two years after the commission of the offence, but when the same offence is subsequently repeated, the time runs from the last offence; and in a case where there has been a conviction at common law, the time is six calendar months from the date of the conviction (*r*). It is to be observed that this Act does not prevent any person from instituting as voluntary promoter any suit which, though in form criminal, shall have the effect of asserting a civil right, nor does it prevent the archbishop from citing clerks under 23 Hen. 8, c. 9 (sect. 19). But no criminal suit or proceeding against a clerk in holy orders for any offence against the laws ecclesiastical shall be instituted in *any Ecclesiastical Court*, otherwise than is provided in the Acts (sect. 23). This does not affect proceedings for penalties under the statutes, nor proceedings under the Public Worship Regulation and Clergy Discipline Acts, and nothing in the Act contained is to be construed to affect any authority over the clergy of their respective provinces or dioceses, which the archbishops or bishops of England and Wales might, at the date of the passing of the Act, according to law, exercise personally and without process in Court (sect. 25). It has, however, been decided that this clause does not preserve any power of

(*p*) See Rules of the Chancery Court of York, 1885 and 1886, 11 P. D. 183. *And see* ARCHES and APPEAL.

(*q*) *Denison* v. *Ditcher* (1857), 11 Moo. P. C. 324.

(*r*) The 27 Geo, 3, c. 44, does not extend the time.

depriving *summarily* which the bishops may have possessed at the time of the passing of the Act (*s*). (*See* OFFENCES; CLERGY DISCIPLINE ACT, 1892.)

CHURCH RATES are rates made by parishioners for ecclesiastical purposes, *i.e.*, according to the Compulsory Church Rate Abolition Act, 1868 (*t*), "the building, rebuilding, enlargement, and repair of any church or chapel and any purpose to which by common or ecclesiastical law a church rate is applicable, or any of such purposes." They are made by the majority of the parishioners present at a vestry summoned for the purpose by the churchwardens, and are assessed on the occupiers of all lands or houses in the parish (*u*). Payment of these rates cannot now be enforced, except (1) as to certain rates which, though called church rates, are applicable to secular purposes (sect. 2); or (2) where money is due on the security of such rates, and then only for the purpose of paying off such money; (3) where such rates are levied under local or private Acts of Parliament in lieu of tithes, or for other valuable consideration (*x*). The Act, however, expressly saves the right of *making* rates, as heretofore, and persons refusing to pay are to have no voice in the distribution of the proceeds (*y*). The vestry, however, is not justified in sending out an application for payment of a church rate on the same form as that for compulsory rates (*z*).

If the occupier of any premises makes default for one month after demand in payment, the owner may pay the church rate, and thereupon is entitled, until the next succeeding rate is made, to stand in the place of the occupier

(*s*) *Reg.* v. *Archbishop of York* (1841), 2 Ad. & Ell. N. S. 1.

(*t*) 31 & 32 Vict. c. 109, s. 10.

(*u*) As to meaning of full annual rent, see *Rose* v. *Watson*, [1894] 2 Q. B. 90.

(*x*) *Ibid.* ss. 2, 3 and 5; and see *Bell* v. *Bassett* (1882), 52 L. J. Q. B. 22; and *Vestry, &c.* v. *Perkins* (1886), 53 L. T. 634; 50 L. T. 65; *R.* v. *Marylebone*, [1895] 1 Q. B. 771; *Hay's Wharf* v. *St. Olave's* (1909), 25 T. L. R. 648.

(*y*) 31 & 32 Vict. c. 109, ss. 6 and 8.

(*z*) See question asked in Parliament—Daily Papers, 13 June, 1890.

for all purposes relating to church rates, including the attending at vestries and voting thereat (*a*).

Bodies corporate, trustees, guardians, and committees who, or whose *cestui que trust*, are in the occupation of any lands, houses, or tenements, may lawfully pay, if they think fit, church rates made in respect of such property, and the same shall be allowed them in their accounts (*b*).

There is nothing to prevent a person who does not intend to pay the rate from attending the vestry meeting called for the making of the rate (*c*).

CIVIL LAW of imperial Rome, more usually called simply "Roman Law" (*d*). Much of our law is derived from it, though not to the same extent as that of Scotland, and the continental countries. The canon law of papal Rome is largely based upon it. Neither the civil nor the canon law forms part of the laws of England, though they are sometimes referred to in the courts. Such portions of these laws as are necessary have long since been incorporated into our common or statute law. If it be desired to show that any old rule or usage of these ancient codes is now binding, continuous and invariable usage in England from the earliest times as part of the common law, must be proved (*e*).

The word "civil" is often used in contradistinction to "ecclesiastical." (*See* CANON LAW.)

CLERGY. The clergy of the Church of England are men who have subscribed the Protestant Articles of Religion and have been admitted by episcopal ordination to one of the three Holy Orders (*f*). The term clergy is also applied to ministers of other churches. The term "Protestant clergy" in 31 Geo. 3, c. 31, includes the clergy of the Churches of

(*a*) 31 & 32 Vict. c. 109, s. 8.
(*b*) 31 & 32 Vict. c. 109, s. 7.
(*c*) Winslow, Nonconformist Law, p. 23.
(*d*) See Wharton's Law Lexicon, tit. Civil Law; *Corpus Juris Civilis*, ed. Stereotypa, pub. at Leipzig: *Codex Justinianus*, P. Krüger, Berlin, 1877; Mommsen's Works; and Hunter's Roman Law.
(*e*) *Exeter* v. *Marshall* (1868), L. R. 3 H. L. 17, at pp. 53 and 54.
(*f*) Bastards are eligible. *Kensit* v. *St. Paul's*, [1905] 2 K. B. 257.

England (Episcopal) and Scotland (Presbyterian) (*g*). In Roman Catholic times the words "clergy" and "church" were synonymous (*h*).

Privileges of Clergy of Church of England. During attendance on divine service (*i*), and also, perhaps, at meetings of convocation (*k*), and at a visitation (*l*), *i.e.*, coming, tarrying, and going, they cannot be arrested in any civil suit. As in the case of members of parliament, this privilege does not extend to indictable offences and actual contempt of Court (*m*). During their ministrations they are specially protected from assault (*n*). They cannot be compelled to serve on a jury (*o*). While on parochial duty they do not pay tolls (*q. v.*). Their ecclesiastical property is not taken in execution in the usual way, but is sequestrated (*p*). Offences against the ecclesiastical law are allowed to be tried in the Ecclesiastical Courts. Their chief ministers are entitled to seats in the House of Lords. They had formerly benefit of clergy (*q. v.*). They also are in exclusive possession of the ancient cathedrals and churches, the tithes and other property of the pre-Reformation Church.

Disabilities. Persons ordained priest or deacon, ministers of the Church of Scotland (*q*), and clergy of the Roman Catholic Church (*r*), may not be members of the House of Commons. The words in the Act of Geo. 3 are "priest or deacon" simply, but they evidently apply to the Church of England only (*s*); and therefore it would seem that clergymen of the Church of Ireland and of dissenting episcopal churches, *e.g.*, the Free Church of England and the Pro-

(*g*) Sects. 38—40, and 3 & 4 Vict. c. 78; Hans. Parl. Deb. vol. 53, pp. 1156—1158.
(*h*) 24 Hen. 8, c. 12, preamble.
(*i*) 1 Bla. Com. 377.
(*k*) 8 Hen. 6, c. 1; 4 Inst. 322; but it may be doubted whether this now applies as convocation has no longer legislative functions.
(*l*) *McGrath* v. *Gerahty* (1866), 15 W. R. 127.
(*m*) See 2 Ste. Com. 364.
(*n*) *See* BRAWLING.
(*o*) 1 Bla. Com. 376.
(*p*) *See* SEQUESTRATION.
(*q*) 41 Geo. 3, c. 63. Penalty 500*l.* a day for sitting and voting.
(*r*) 10 Geo. 4, c. 7, s. 9.
(*s*) See s. 4.

testant Episcopal Church of Scotland, are exempt from this disability. There is no law to prevent a non-episcopal dissenting minister from becoming an M. P.

Church of England clergy may not be aldermen or councillors of municipal corporations. This disability extends to the "regular minister of any dissenting congregation" (*t*). But "clerks in holy orders and other ministers of religion" may be aldermen or councillors of county councils (*u*), and members of school boards (*x*), and magistrates.

The circumstances under which clergymen of the Church of England may farm and trade are laid down in the Pluralities Act, 1838. No spiritual person who is performing the duties of any ecclesiastical office whatever may take by himself any lands exceeding eighty acres in the whole for the purpose of occupying, or using, or cultivating the same, without the permission in writing of his bishop. The permission must not be for more than seven years. Penalty under this section (*y*), 40*s*. per annum per acre (above eighty). Nor may he, by himself or by any other for him or to his use, engage in trade or dealing for gain or profit, except (1) where the trading or dealing is carried on on behalf of seven or more partners; (2) when the business has devolved upon him by virtue of a bequest, settlement, or bankruptcy, but in no case is such spiritual person to act as director or managing partner, or carry on the trade or dealing in person (*z*). These provisions do not apply (1) to the trade of a schoolmaster; (2) to the *bonâ fide* re-selling (even if at a profit) of articles not required by such spiritual person or his household; (3) disposing of any books or other works to or by means of any bookseller or publisher; (4) being a manager, director, partner, or shareholder in any benefit society or fire or life assurance society; (5) buying and selling articles necessary for the occupation, manuring, improving pasturage, or profit of any glebe,

(*t*) 45 & 46 Vict. c. 50, s. 12; *Reg.* v. *Oldham* (1869), L. R. 4 Q. B. 290.
(*u*) 51 & 52 Vict. c. 41, s. 2 (2) (a).
(*x*) See 33 & 34 Vict. c. 75.
(*y*) 1 & 2 Vict. c. 106, s. 28.
(*z*) Sect. 29.

demesne lands, or other lands lawfully held by such spiritual person; (6) selling minerals or produce of mines situated on his own land. But in no case may such spiritual person buy or sell in any market, fair, or place of public sale (*a*). Offenders are liable to suspension, and for a third offence to deprivation. The Act does not affect any *contract* of such spiritual person trading improperly; that remains perfectly valid, and may be enforced (*b*).

Clergymen also have to be very careful how they accept gifts from members of their congregation, or under any circumstances which may give rise to a suspicion of undue influence. If the gift is made *inter vivos* the Courts of equity cast upon the person holding the position of influence the burthen of proving that the transaction was fairly conducted as between strangers, or, in other words, that the donor was placed in such a position as would enable him to form an absolutely free and unfettered judgment. If the gift is made by will, the burthen of proof is on the other side (*c*), but the gift is still liable to be upset, and great care should be exercised by the clergyman. The donor should always have independent legal or other advice. The same caution should be exercised by the superiors of religious houses (*q. v.*). Clergymen must also be more circumspect than laymen in their manner of living (*d*).

Duties. "Ecclesiastical duties" (as defined by the Pluralities Act, 1885) are not only the regular and due performance of divine service on *Sundays and Holidays*, but also all such duties as any clergyman holding a benefice is bound by law or his ordination vows to perform, and the performance of which shall have been required of him in writing by the bishop, and in Wales and Monmouthshire, in addition the performance of such services in Welsh (not exceeding one such service on every Sunday) as the bishop shall direct (*e*).

(*a*) Sect. 30.
(*b*) Sect. 31.
(*c*) *Parfitt* v. *Lawless* (1872), L. R. 2 P. & D. 462.
(*d*) *See* CLERGY DISCIPLINE ACT.
(*e*) 48 & 49 Vict. c. 54, s. 2.

Such duties include the observance of all the promises as to conduct a clergyman makes at ordination (*f*). The promise to obey the bishop has been construed as follows:—That the clergyman need not obey all the commands of the bishop against which there is no law, but that he will obey all such commands as the bishop by law is authorized to impose (*g*). Whenever the bishop sees reason to believe that these duties are inadequately performed, he may issue a commission of three clergymen and one layman; to which the accused incumbent may add one clerical or lay member who must be either an incumbent or a magistrate; and to which the chairman of last preceding quarter sessions or the lord lieutenant shall add two more members, being either laymen, in the commission of the peace for the county in which the benefice is situate, or barristers or solicitors of not less than ten years' standing; but the bishop's secretary or diocesan registrar is not qualified (*h*). Thereupon an inquiry is conducted in the manner directed by the Act (*i*); and if the commission reports that the duties are inadequately performed, the bishop may require the incumbent to appoint a proper curate (*k*), and in default may appoint one himself and assign him a salary (*l*). By the Benefices Act, 1898, it is provided that if the commission further reports that the inadequate performance is due to the negligence of the incumbent (which term negligence includes wilful default in the performance of the duties), the bishop may appoint a curate or curates without requiring the incumbent to do so, and may also inhibit the incumbent from the performance of such duties (*m*); these powers of appointing and requiring the appointment of a curate may be exercised from time to time in case of any vacancy in the curacy (*n*). When a

(*f*) 61 & 62 Vict. c. 48, s. 13 (3).
(*g*) *Long* v. *Capetown*, in P. C. (1863), 1 Moore, P. C. N. S. 465; Brod. & Fr. 313.
(*h*) 1 & 2 Vict. c. 106, s. 77; 48 & 49 Vict. c. 54, s. 3; 61 & 62 Vict. c. 48, s. 8.
(*i*) 48 & 49 Vict. c. 54, s. 3.
(*k*) 1 & 2 Vict. c. 106, s. 77; and as to the serving of notices, s. 112; and 48 & 49 Vict. c. 54, s. 15.
(*l*) *See* CURATE.
(*m*) 61 & 62 Vict. c. 48, s. 9 (1), and s. 13 (3).
(*n*) *Ibid.* s. 9 (2).

curate has been appointed under the Pluralities Acts before the commencement of the Benefices Act, 1898, the bishop may issue a commission, and if the commission reports that the incumbent is negligent, the bishop may inhibit him from performing all or any of the duties (*o*). When an incumbent is inhibited under the Benefices Act, he must not interfere with or control any curate in the performance of the duties, and any right of patronage vested in him by virtue of his incumbency, while he is inhibited, vests in the patron, or, if the incumbent be the patron, then in the archbishop of the province (*p*). An incumbent so inhibited is not liable to any penalty or forfeiture for non-residence, but sects. 93 and 94 of the Pluralities Act, 1838, apply. The incumbent remains liable for repairs, but is entitled to retain out of the curate's stipend such amount in respect of repairs, and is entitled to such facilities for executing repairs as the bishop may, in case of difference, decide to be reasonable (*q*). The incumbent may appeal to the Court constituted under the Benefices Act (*r*) within one month after the appointment of a curate or the issue of an inhibition (*s*).

No clergyman of the Church of England is entitled to officiate publicly in any parish church, chapel, or *any other place* without a bishop's licence (*t*); nor can he so officiate in the parish of another clergyman without his authority as well as that of the bishop (*u*), except under certain Acts of Parliament, as in the case of a workhouse, army, or private chaplain (*q. v.*). A clergyman who wishes to break these or any other rules of the Church, must either become a declared member of some other church or denomination, or take advantage of the Clerical Disabilities Act, 1870; otherwise he remains subject to the episcopal authority, and to legal proceedings as a criminous clergyman (*x*).

(*o*) 61 & 62 Vict. c. 48, s. 9 (3).
(*p*) *Ibid.* s. 9 (4).
(*q*) *Ibid.* s. 9 (5).
(*r*) *Ibid.* s. 3.
(*s*) *Ibid.* s. 9 (6).
(*t*) *Barnes* v. *Shore* (1846), 1 Rob. 382; 8 Q. B. 640. *See* CONGREGATION and Bill 239 of 1911.
(*u*) *Freeland* v. *Neale* (1848), 1 Rob. 643, p. 649; *Foundling* v. *Garrett* (1882), 47 L. T. 230.
(*x*) See 43 & 44 Vict. c. 41, s. 14;

A clergyman who conducts divine service in a consecrated or unconsecrated building *publicly* in the presence of a congregation (*q. v.*) must observe the statutory forms (*y*). He may depart from the Liturgy when conducting a *private* service for the benefit of *his own* private family and household (*z*); but on such an occasion he may only read prayers or a sermon, he may not preach or administer the Holy Communion (*a*). If in times of dangerous sickness he preaches or administers the Communion privately, he must comply with the rubrics and the canons (*b*).

No action for damage lies against a clergyman for refusing to celebrate divine service (*c*), but he may be proceeded against for penalties under the statutes or in the Ecclesiastical Courts (*d*).

No spiritual person may serve more than two benefices in one day unless in case of emergency, when the circumstance must be forthwith reported to the bishop (*e*).

Dress. The canon law lays down the details of a clergyman's attire with considerable particularity, but the apparel ordered is now somewhat out of date. In private they "may use any comely and scholarlike apparel," but in public they may not "go in their doublet and hose without coats or cassocks." The apparel is to be "decent and comely," but not "light-coloured." The dignitaries of the Church are not to "intermit" to wear their gowns and hoods. The regulation dress of the clergy immediately after the Reformation was square cap, black gown and tippet (*f*).

Statistics. The clergy of the Church of England of all ranks number about 28,000. Of these, about 3,000 are employed in clerical work abroad, or as secretaries, &c. of

but see also *Barnes* v. *Shore* (1846), 8 Ad. & E. 640: the statement in the text is, however, practically correct.

(*y*) As to which, *see* PUBLIC WORSHIP.

(*z*) *Freeland* v. *Neale*, *ubi sup.*

(*a*) Can. 71, and see Can. 73.

(*b*) *See* PUBLIC WORSHIP.

(*c*) 5 Rep. 72 b.

(*d*) *Rugg* v. *Winchester* (1868), L. R. 2 P. C. 223.

(*e*) 1 & 2 Vict. c. 106, s. 106.

(*f*) Eliz. Inj.; Can. 74; and Tomlinson on the Prayer Book, 114. *See* VESTMENTS.

various church societies. About 14,000 are beneficed in England and Wales, and about 6,000 are paid curates. The remaining 5,000 appear to have, strictly speaking, no clerical employment. They comprise schoolmasters, invalids, and the unemployed.

The pay of the clergy varies considerably: from 80*l*., or even less, to 15,000*l*. a year. The incomes of some of the bishops, however, are materially reduced by the expenses of litigation. All classes of the clergy are alike expected to contribute to charitable objects in proportion to their means. It is said that some of the clergy receive an average income of no more than 118*l*. a year during their whole career. Surely the richer clergy are not without responsibility in this matter (*g*). In the Presbyterian Church of England the ministers (except under exceptional circumstances) receive a minimum income of 200*l*. a year, and this without any State aid whatever. In the Established Church of Scotland, as also in the disestablished, and comparatively poor, Church of Ireland, the position of the junior clergy is said to be much more favourable than in the richly-endowed Church of England.

CLERGY DISCIPLINE ACT, 1892, provides a new procedure for better enforcing discipline in the case of crimes and other offences against morality committed by clergymen who are not diocesan bishops (*h*). It does not repeal the Church Discipline Act, 1840, totally, but only as respects offences which come within the purview of the Act of 1892 (*i*), and certain sections of the Act of 1840 (viz., 2, 6, 14, 18, 22, 25) are expressly incorporated (*k*).

(*g*) See the Reports of the Secretary of the Curates Augmentation Fund.

(*h*) Sects. 12 and 13 (2). For Rules, see Stat. R. & O. 1892, 258, and Lond. Gaz. May 3, 1898.

(*i*) Sect. 14 (3). The Courts appointed and created by the Act of 1892 are the only Ecclesiastical Courts having jurisdiction in matters exclusively within the purview of that Act: *Bowman* v. *Lax*, [1910] P. 300, *per* Sir L. Dibdin, D.A.

(*k*) Sect. 10 (1).

The offences dealt with under the Act are divided into two classes:—

(1.) Serious offences in respect of which the conviction and finding of the temporal court is made the ground (without further trial) of summary deprivation from present and future preferment.

(2.) Minor offences triable in the consistory court.

Under class one are included treason, felony, or misdemeanour, involving imprisonment with hard labour or any greater punishment; adultery; and certain cases where orders have been made for judicial separation (*l*); or separation orders; or orders in relation to bastardy.

The bishop is the proper officer to declare a preferment to be vacant, and he must do so within twenty-one days after the conviction becomes conclusive, otherwise the archbishop is to act (*m*).

But a free pardon from the Crown cancels the incapacity of the convicted clergyman (*m*).

Under class two are included ecclesiastical offences not included in class one for which a conviction has been obtained in a temporal court, whether offences against morality or not (*n*), also immoral acts, conduct (*o*), or habits, or any offences against the laws ecclesiastical, being offences against morality, and not being questions of doctrine or ritual (*p*).

The expressions "immoral act," "immoral conduct," and "immoral habit," include such acts, conducts, and habits as are proscribed by the 75th and 109th canons of 1604 (*q*). These include resorting of clergy to taverns or alehouses other than for honest necessities, giving themselves to base or servile labour or to drinking or riot, spending their time idly by day or by night playing at dice, cards, or tables, or any other unlawful games (*r*), offending their brethren either by adultery, whoredom, incest, or drunkenness, or by swearing, ribaldry (*s*), usury, and any other uncleanness or

(*l*) *Sweet* v. *Ely* (*Bishop*), [1902] 2 Ch. 514.
(*m*) 55 & 56 Vict. c. 32, s. 1.
(*n*) *Girt* v. *Fillingham*, [1901] P. 176.
(*o*) *Sweet* v. *Young*, [1902] P. 37.
(*p*) 55 & 56 Vict. c. 32, s. 2.
(*q*) 55 & 56 Vict. c. 32, s. 12.
(*r*) Can. 75.
(*s*) The occasional use of objectionable language, even though highly disgraceful, does not consti-

wickedness of life (*t*). They also include the collection of alms on false and fraudulent pretences (*u*). A charge of "occasioning grave scandal and offence in the parish" is not warranted by the words "offending the brethren," and cannot be tried under the Act (*v*). "Giving scandal" is not in itself an offence. The actual offences which give the scandal must be proved, the proof of impression on other persons around is of no consequence (*x*). The meaning of the reference to Canon 109 is that adultery and other offences enumerated (including drunkenness) are those cognizable under the Act, although drunkenness is already mentioned in Canon 75 (*v*). Simony has been held not to be "immoral" under the Act, and, consequently, the making of a false declaration against simony cannot be treated as such, otherwise the offence of simony would be indirectly triable, and in the same way ritual offences would be also indirectly triable upon breach of the declaration of assent contrary to the express terms of the Act. Proceedings must, therefore, still be taken under the Act of 1840 (*y*). But by the Benefices Act, 1898, a breach of the promissory part of the declaration against simony is now made an offence under the Clergy Discipline Act, 1892 (*z*).

Having regard to the decisions on the other Acts, the bishop's right of veto under sect. 2 (a) would, no doubt, be held to be absolute (*a*).

The assessors, three of whom are to be clergymen and two laymen, are to be chosen in the prescribed manner from a list

tute habitual swearing and ribaldry: *Moore* v. *Oxford* (*Bishop*), [1904] A. C. 283.

(*t*) Can. 109; *Sweet* v. *Young*, [1902] P. 37.

(*u*) *Fitzmaurice* v. *Hesketh*, in P. C., [1904] A. C. 266.

(*v*) *Bishop of Rochester* v. *Harris*, [1893] P. 137.

(*x*) *Hutchins* v. *Denziloe* (1792), 1 Cons. at p. 182, *per* Lord Stowell; and see *Bowman* v. *Lax*, [1910] P. 300. As to the construction of the Jersey canons on this matter, see *Jersey* (*Dean*) v. *Rector* (1840), 3 Moo. P. C. 229; and see *Burder* v. —— (1844), 3 Curteis, 822; and Church Discipline Act (3 & 4 Vict. c. 86), s. 3.

(*y*) *Beneficed Clerk* v. *Lee*, [1897] A. C. 226; reversing *Lee* v. *Flack*, [1896] P. 138.

(*z*) 61 & 62 Vict. c. 48, s. 1 (5). *See* SIMONY.

(*a*) *See* CHURCH DISCIPLINE ACT, 1840, and PUBLIC WORSHIP REGULATION ACT, 1874. The Royal Commission has recommended that the bishop's veto should be abolished.

of assessors which is to be made out every three years (*b*). Any assessor may be objected to by either party.

There can be no prosecution after five years from the date of the offence or the last of a series of acts alleged as part of the offence, except that a complaint may be made within two years after a conviction of a temporal court becomes conclusive, which is deemed to be the case when proceedings on appeal are finally concluded, or, if there has been no appeal, upon the expiration of the time limited for appeal.

Punishments are deprivation (*q. v.*), deposition (*q. v.*), and suspension (*q. v.*), and in passing sentence regard is to be had to the interests of the parish or place and not to precedents of punishments. In all cases, however, the clergyman's incapacity to hold preferment ceases if he receives a free pardon from the Crown, and, further, will not extend to any preferment which the bishop of the diocese and archbishop of the province may allow him to hold (s. 6 (2) (b)). This latter provision would seem to enable the prelates to keep a clergyman in his preferment in opposition to the finding of the Court, and, in certain cases, to render nugatory the right of appeal which either party has to the provincial Court or the King in Council.

Notice of appeal on a matter of law must be given not more than twenty-eight clear days after day of judgment, and on facts, fifteen days (*c*). An appeal will not be allowed if the grounds are idle and frivolous (*d*).

COADJUTOR BISHOP is an assistant bishop appointed in the event of mental incapacity of an archbishop or bishop. The present regulations are contained in the Bishops' Resignation Act, 1869. The procedure is similar to that on the resignation of a bishop, and the coadjutor is elected in like manner as if the bishopric were vacant. He cannot sit in

(*b*) See sect. 3.

(*c*) 55 & 56 Vict. c. 32, s. 4, and Rules 60 & 61. *Lee* v. *Atherton*, [1904] A. C. 805; *Chesney* v. *Newsholme*, [1908] P. 301.

(*d*) *Evans* v. *Woods*, [1900] A. C. 338.

the House of Lords, nor sign himself by the name of the diocese; the incapacitated bishop retaining his rank, style, and privilege. The income of a coadjutor is 2,000*l.* a year (except Sodor and Man, 1,000*l.*), payable half-yearly, and the spiritualities and patronage of the see vest in him (*e*). He does not necessarily succeed to the archbishopric or bishopric, but he is entitled to succeed to some bishopric other than that of Sodor and Man. In the case of an archbishop the coadjutor's income is—Canterbury, 4,000*l.*, and York, 3,000*l.*, a year. He performs episcopal functions only, the archiepiscopal duties devolving on the bishop of the province who is senior in rank (*f*).

COLLATION. (*See* INSTITUTION.)

COLONIAL CLERGY ACT. (*See* ANGLICAN COMMUNION.)

COMMENDAM "is a benefice that being void is *commended* to the care of some sufficient clerk to be supplied until it may be conveniently provided of a pastor" (*g*). Formerly, bishops frequently held livings *in commendam* in order to appropriate the revenues. Commendams were abolished in 1836 (*h*).

COMMINATION or denunciation service is directed to be used on the first day of Lent, and such other days as the ordinary shall appoint. The preliminary address is directed to be said by a "priest," most of the remainder by a "minister." (As to this, *see* ABSOLUTION.)

COMMISSARY is a kind of archdeacon. He supplies the office and jurisdiction of the bishop in the out-places of the diocese, or in such parishes as are peculiars to the bishop, and

(*e*) 32 & 33 Vict. c. 111, ss. 3—5 and 11.
(*f*) 32 & 33 Vict. c. 111, ss. 12, 13.
(*g*) Termes de la ley.
(*h*) 6 & 7 Will. 4, c. 77, s. 18; 1 & 2 Vict. c. 30, s. 3.

exempted from the archdeacon's jurisdiction (*i*). The office may be held by a layman, who must be qualified in the same way as a chancellor (*k*). A sentence, under the Church Discipline Act, pronounced by a commissary, is as good and effectual as one pronounced by the bishop (*l*).

COMMON LAW is the unwritten law of the realm of England as opposed to the statute law or *lex scripta;* though various definitions are given (*m*). The term is derived from the canonists who used it to describe the *jus commune* or general law of the Church of Rome. This has to be remembered when reading Lyndwood, for example. *See* CANON LAW; ECCLESIASTICAL LAW.

COMMUNICANT. The proper and primary meaning of this word is now confined to those who actually commune. In ancient times, every person whom the Church regarded as under an obligation to commune, was virtually a communicant (*n*).

CONFESSION of sin is usually "general," as at Morning and Evening Prayer, and at Holy Communion. But anyone may, at any convenient time, talk over his difficulties with his minister; and in the visitation of the sick, and as a preparation for the Lord's Supper, a minister is justified in urging a member of his congregation to private confession; but only, it would seem, if the conscience is troubled with any weighty matter. The law, therefore, is that an occasional confidence or confession in exceptional circumstances is not only allowable, but is enjoined; but anything like habitual or systematic auricular confession and absolution (*o*) is not allowable in the Church of England.

The Homily of Repentance, which curiously enough is often cited in support of auricular confession and absolution,

(*i*) Termes de la ley.
(*k*) *See* CHANCELLOR.
(*l*) 3 & 4 Vict. c. 86, s. 12.
(*m*) Wharton's Law Lexicon.
(*n*) *Queen* v. *Hall* (1866,) L. R. 1 Q. B. 640.
(*o*) *See* ABSOLUTION.

lays down the law as follows:—"Whereas the adversaries go about to wrest this place (*p*), for to maintain their auricular confession withal, they are greatly deceived themselves and do shamefully deceive others: for if this text ought to be understood of auricular confession, then the priests are as much bound to confess themselves unto the lay-people, as the lay-people are bound to confess themselves to them. And if to pray is to absolve, then the laity by this place hath as great authority to absolve the priests, as the priests have to absolve the laity;" and again, referring to Matt. 8, "What need we then to tell forth our sins into the ear of the priest, sith that they be already taken away?" and again, "It is most evident and plain that this auricular confession hath not his warrant of God's word." Then, after further remarks, all against auricular confession, comes the passage usually cited: "I do not say, but that, if any do find themselves troubled in conscience, they may repair to their learned curate or pastor, or to some other godly learned man, and show the trouble and doubt of their conscience to them, that they may receive at their hand the comfortable salve of God's Word." The sentence, however, ought to be finished; it ends thus, "but it is against the true Christian liberty, that any man should be bound to the numbering of his sins, as it hath been used heretofore in the time of blindness and ignorance."

The question of systematic confession came up for consideration in the case of *Poole* v. *Bishop of London*, in which the bishop delivered judgment in these terms:—"I am led by your own admission to regard the course you are in the habit of pursuing in reference to confession as likely to cause scandal and injury to the Church. I feel especially that this questioning of females as to violation of the seventh commandment is of a dangerous tendency, and I am convinced, generally, that this sort of systematic admission of your people to confession and absolution which you have allowed

(*p*) James 5.

to be your practice ought not to take place." In his judgment confirming the withdrawal of the offender's licence, the Archbishop of Canterbury said, "I am of opinion that the course pursued by the appellant is not in accordance with the rubric or doctrine of the Church of England, but most dangerous and likely to produce most serious mischief to the cause of morality and religion" (*q*).

By the canon a minister may not reveal any matters confided to him in confession, except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same (*r*); but this may be overridden by the common law. A great authority (*s*) says, "I think that the modern law of evidence is not so old as the Reformation. It came into existence at a time when exceptions in favour of auricular confessions to Roman Catholic priests were not likely to be made. The general rule is that every person must testify to what he knows. An exception to the general rule has been established in regard to legal advisers, but there is nothing to show that it extends to clergymen, and it is usually so stated as not to include them." But, on the other hand, he says, "Several judges have, for obvious reasons, expressed the strongest disinclination to compel such a disclosure."

The relation of confessor and penitent does not necessarily imply undue influence (*t*).

CONFIRMATION. (1) An apostolic rite of laying on of hands which must be performed by a bishop in the English and Roman Churches, but may be by a priest in the Greek Church. In the latter Church, also, baptism and confirmation are simultaneous. In the English Church

(*q*) *Poole* v. *Bishop of London* (1859), 5 Jur. N. S. 522.
(*r*) Can. 113.
(*s*) Mr. Justice Stephen, Digest of the Law of Evidence, 5th ed., p. 195; and see Best on Evidence, ss. 583, 584.
(*t*) *Parfitt* v. *Lawless* (1872), L. R. 2 P. & D. 462. *And see* CLERGY.

adults are to be confirmed as soon as conveniently may be after baptism, but infants not until they come to a competent age (*u*) (generally over 15). The rubric at the end of the confirmation office states that none can be admitted to the Holy Communion "until such time as they are confirmed, or are ready or desirous to be confirmed." By the canon, the bishop has supreme power as to confirmation, and he may confirm without presentation by the minister. There must be a confirmation in every parish once in three years, unless the bishop is unable by reason of some infirmity; and the ministers are to see that the candidates are properly prepared (*x*). It is said that, like baptism, the rite of confirmation must not be repeated.

(2) The ratification of the election of a bishop by the dean and chapter is also called "confirmation." This ceremony is carried out according to a form which differs from the canon law and which was drawn up in the early post-Reformation period (1534). It thus forms an illustration of how post-Reformation common law grew up. (*See* CANON LAW.) It is very doubtful whether this strict form and order of the proceedings can be departed from now, without an Act of Parliament (*y*).

The form contains a "triple preconisation" whereby those present are asked to state their objections to the confirmee, but it has been held that, in accordance with ancient custom, no objection can be taken on the ground of heresy or unsoundness of doctrine (*z*). Objections are allowed on two points only, viz., (1) defect in matter of form of the election, (2) the identity of the confirmee. If any person has any other objection to make or thinks the choice of the Crown erroneous, it is his duty to move at an earlier stage

(*u*) For various directions, see the rubrics to baptismal services.

(*x*) Cans. 60 and 61; and *Saunders* v. *Head* (1843), 2 N. of C. 355.

(*y*) See *Mountague's case* (1629), 6 State Trials (N. S.), 427, n. (*b*), where Sir Henry Martin, D.A., thought not; but see *contra*, *Temple's case* (1869), Times, Dec. 9, 1869, and *R.* v. *Canterbury*, [1902] 2 K. B. at p. 509, *coram* V. G.

(*z*) *Rex* v. *Canterbury*, [1902] 2 K. B. 503.

and petition his Majesty not to issue his mandate for the confirmation (*a*).

Preliminary proceedings may be heard "in chambers" (*b*).

A bishop elected by *congé d'élire* must be confirmed before he can be summoned as a Lord of Parliament (*c*).

CONGREGATION means (1) the whole Christian Church (*d*); (2) the persons *publicly* worshipping together in the same place. The presence of three or four persons is sufficient to make a congregation in this sense (*e*). For the Communion Service there must be three persons in addition to the priest (*f*).

A gathering for the purposes of worship is nearly always *public* even in *private* chapels. Sir Jenner Fust says: "A man may be said to read prayers privately when he reads them to his own household, and within his own doors; but when he reads them in a building not within his own doors and to persons not constituting part of his household, such reading must be public" (*g*).

CONSECRATION. (*See* BISHOP; ORDERS; PARISH CHURCH.)

CONSISTORY COURT is the Court of a diocese for the trial of ecclesiastical causes. The bishop's chancellor is the judge. Though usually appointed by the bishop, he is (subject to the terms of his patent) an independent judge, and cannot be controlled by him; hence a bishop may institute a civil suit in his own Court (*h*). Sometimes the bishop sits alone or without his chancellor as assessor, but it may be doubted whether these are sittings of the "Consistory

(*a*) *Temple's case, supra.*
(*b*) *Rex* v. *Canterbury, ubi sup.*
(*c*) *Evans* v. *Ascough* (1627), Lat. 233.
(*d*) Art. 19.
(*e*) *Barnes* v. *Shore* (1846), 10 Jur. 890; *Freeland* v. *Neale* (1848), 12 Jur. 635.
(*f*) Rubric. *See* LORD'S SUPPER.
(*g*) See *Freeland* v. *Neale, ubi sup.*; *Nesbitt* v. *Wallace*, [1901] P. 354.
(*h*) *See* CHANCELLOR.

Court" (*i*). The custody of public documents relating to the See of London is vested in the Consistory Court (*k*).

CONSTITUTION, The. (*See* PROTESTANT SUCCESSION.)

CONVOCATION is an assembly of the clergy (*l*). There is a separate convocation for each province, the two together forming the Synod (*q. v.*). Each consists of an Upper and Lower House. The Upper House comprises the archbishop and the bishops of the province; the Lower House, deans, archdeacons, suffragan bishops, and proctors, who are the elected representatives of the beneficed clergy and cathedral chapters (*m*). The Lower House of Canterbury numbers about 175 members, and that of York about 85 members. There is also a Prolocutor or Speaker of each Lower House. In the absence of the King, the archbishop is the usual president of the convocation of his province (*n*), and it has been held that he has the right of deciding that a candidate who had been elected to represent an archdeaconry in the Lower House is disqualified, and that the High Court

(*i*) See *Tanner* v. *Scrivener* (1888), 13 P. D. 128; *White* v. *Bowron* (1873), L. R. 4 A. & E. at p. 211. *But see* CLERGY DISCIPLINE ACT.

(*k*) *Re Mayflower*, [1897] P. 208, in which an order was made presenting the log of the "Mayflower" to the United States.

(*l*) The parliamentary convocations must not be confused with the ecclesiastical provincial synods which in Roman Catholic times were summoned by papal legates or archbishops alone without the King's writ. The latter came to an end with the Act of Submission of the Clergy (25 Hen. 8, c. 19). The State convocation existed for the taxation of the clergy and the King's business, and continued after the Reformation. At the Reformation, church business became theKing's business. See the article on Convocation by the Author in Lord Halsbury's Laws of England, vol. ii. 390.

(*m*) 1 Bl. Com. 279. Stipendiary curates have no votes for the Lower House. Convocation therefore does not now represent the whole body of the clergy as it did in Lord Coke's day (*Case of Convocations* (1610), 12 Rep. 72, 73), and it does not represent the laity at all. Of recent years voluntary assemblies called "Houses of Laymen" have been formed, but they are unknown to the law, and cannot be said in any case to *represent* the laity.

(*n*) Since the Act of Submission of the Clergy convocation has, in the absence of the King, been presided over by the King's vice-gerent, the vice-gerent's representative, the archbishop of the province, and a bishop of the province. See Ratification of Canons of 1604.

has no jurisdiction to compel him by *mandamus* to admit the candidate to convocation (*o*).

Convocation can only be summoned pursuant to the King's writ, and can only be prorogued or dissolved by the like Royal authority. (For forms, see Pearce, Law of Convocations.) Self taxation by the clergy was discontinued about 1665 (*p*). After that, its *raison d'être* having gone, only formal meetings of convocation were held for a long time. Early in the 18th century some meetings were held at which doctrines were discussed, but after 1717, owing to the turbulent behaviour of the Lower House of Canterbury, no business was placed before the convocation for about 150 years. It was summoned and immediately prorogued.

Convocation can discuss matters remitted to it by Royal letters of business. In 1864 it passed a resolution condemning "*Essays and Reviews*" (*q*), and in 1872 it considered the report of the Ritual Commissioners; and in 1889 it declared itself in favour of the establishment of brotherhoods. It is now (1911) considering, under Royal letters of business, the question of vestments and the revision of the Prayer Book; but it has no legislative power whatever, and no control over the clergy. The Upper House of Convocation is not a court of appeal (*r*).

COPE was originally an out-door dress for defence against rain, and consequently called *pluviale* (*s*). As an ecclesiastical vestment it may be described as a cloak fastened in front and sometimes furnished with a hood or cowl. It is the eucharistic vestment of the Armenian Church. The Privy Council, in *Ridsdale* v. *Clifton*, seemed to express the opinion *obiter* that the cope may be used on certain special occasions at the Lord's Supper in cathedrals and collegiate churches, but it has always been illegal in ordinary churches on all

(*o*) *Queen* v. *Archbishop of York* (1887), 20 Q. B. D. 740.

(*p*) *Queen* v. *Archbishop of York*, *ubi sup.*

(*q*) *See* ARTICLES OF RELIGION.

(*r*) *Gorham* v. *Exeter* (1850), 5 Exch. 630.

(*s*) Smith, Dict.; and see Scudamore Notitia Eucharistica.

occasions. The question of cope-wearing was not before the Court in either *Hebbert* v. *Purchas* or *Ridsdale* v. *Clifton*. The practice of using it, never general, died out altogether about 200 years ago, and it may be doubted whether its use could now be held to be compulsory or even permissible (*t*). It has been used at coronations and other State functions.

CORONATION SERVICE does not come within the scope of the Acts of Uniformity. (*See* ANOINTING; LORD'S TABLE.)

CORPORAS. A small linen cloth anciently placed on the Lord's table on which the consecrated elements are placed. It is a legal "ornament." A "fair linen cloth" is required to be used in the Church of England to cover up what remaineth of the consecrated elements (*u*).

CREDENCE TABLE is simply a small side table on which the bread and wine are placed before the consecration. The rubric directs that at a certain point in the course of the service the minister shall place the bread and wine on the Communion table, but where they are to be placed previously is nowhere stated. The Privy Council have therefore held that the use of a credence table as an adjunct to the Communion table is perfectly unobjectionable and legal (*x*).

CREEDS. The Apostles' and Nicene Creeds date from the 4th century, and the Athanasian from about the 7th. They are used by the Romish and English Churches (*y*), but are rejected by many Protestants. The Athanasian Creed has been rejected by some churches of the Anglican Communion, and a large party in the Church of England is desirous that it may be made optional. Neither the Apostles' or Athanasian Creeds are used in the offices of the Eastern Church or any of its branches, nor have they ever been (*z*).

(*t*) See and compare advertisements of 1566, and Cans. 24 and 58. *Hebbert* v. *Purchas* (1871), 3 P. C. 645; and *Ridsdale* v. *Clifton* (1877), L. R. 2 P. D. 321.

(*u*) *See* Rubric.

(*x*) *Liddell* v. *Westerton* (1857), 5 W. R. 477.

(*y*) See Art. 8.

(*z*) Prot. Dict., art. Ath. Creed.

CREMATION was not practised in this country prior to 1882 (*a*); but the burning of a dead body instead of burying it is not in itself illegal (*b*), if desired by the deceased. There would seem to be no objection to the Church Burial Service being used at a cremation, or at the burial of cremated remains. When both burial and cremation are desired, cremation must come first (*c*). It is doubtful whether the deposit of cremated remains in a church wall would be permitted; but there is no objection on sanitary grounds to their being placed in any part of a church, even though such church be closed for burials (*d*). The burning must not take place so as to be a nuisance, or with a view of preventing a coroner's inquest (*b*). Cremation and the establishment and control of crematoria is now regulated by statute (*e*). The incumbent is not under any obligation to perform a funeral service, but must allow some other clerk being duly qualified and authorised, to perform the service (*f*). Fees may be fixed in respect of such service, otherwise the usual fee applies (*g*).

CROSS. The distinctive and characteristic emblem of Christianity. In the Middle Ages it was the object of superstitious worship (*h*), and hence the objection to it on the part of many reformed churches, but now in the Church of England it is held to be a legal "decoration" of a church, though illegal as an "ornament" (*i*). It must not, however, be attached to the Communion table or placed upon a ledge immediately over the table, so as to appear to form one structure with it, and it makes no difference whether it is fixed or moveable (*k*). It may, however, be placed on the

(*a*) *Per* Tristram, C., [1894] P. 287.
(*b*) *R.* v. *Price* (1884), 12 Q. B. D. 247; *R.* v. *Stephenson* (1884), 13 Q. B. D. 331.
(*c*) *Re Dixon*, [1892] P. 386.
(*d*) *Re Kerr*, [1894] P. 284.
(*e*) 2 Edw. 7, c. 8.
(*f*) *Ibid.* s. 11.
(*g*) *Ibid.* s. 12.
(*h*) *Liddell* v. *Westerton* (1857), 5 W. R. 472; *Durst* v. *Masters* (1876), 1 P. D. 373.
(*i*) *See* ORNAMENTS.
(*k*) *Liddell* v. *Westerton* (1857), 5 W. R. 472; *Durst* v. *Masters*, in P.C. (1876), 1 P. D. 373; *St. Mark's*, [1908] P. 167.

sill of the eastern window, five feet above the Communion table, or it may surmount a chancel screen (*l*). Of course, in no case may it be an object of superstitious reverence, or carried in processions, or otherwise used ceremonially. The sign of the cross must be made in the public Baptismal Service, but otherwise it is illegal to make it ceremonially as part of Divine Service (*m*). Making the sign of the cross is held by the Church of England to be one of those indifferent matters which "may not be omitted at every man's pleasure contrary to the law when they be commanded, nor used when they be prohibited" (*n*).

CRUCIFIX (Lat. *crucifixus*, fixed on a cross). An image of our Lord on the cross. It is an illegal church ornament, but allowable as a mere decoration in certain circumstances, the merits of which have to be decided in each particular case. Being an image, it differs widely from a cross, as there is a greater peril of idolatry. It is illegal to set one up in a position corresponding to that occupied by the rood in pre-Reformation times, *i.e.*, surmounting the chancel screen. The rood (*i.e.*, the crucifix with the attendant figures of Mary and John) was set up for the particular purpose of adoration, and there is a reasonable apprehension that a crucifix would now be used in a similar way (*o*). A rood, therefore, of exactly the old pattern in exactly the same position and for no purpose arising out of the authorised services of the Church is *ipso facto* likely to cause abuse, and it cannot be considered as decorative only (*p*). But if the crucifix is not an isolated figure, but part of a group capable of artistic treatment, and if there is no evidence of

(*l*) *Bradford* v. *Fry* (1878), 4 P. D. 106.

(*m*) See *Read* v. *Lincoln*, L. R. [1891] P. 88.

(*n*) Can. 30.

(*o*) *Ridsdale* v. *Clifton*, in P. C. (1877), 2 P. D. 350, and *sqq.*; *Timberhill*, [1895] P. 71; *Richmond*, [1897] P. 70; *Great Bardfield*, [1897] P. 85; and see *St. Mark's*, *Marylebone*, [1898] P. 114; *Kensit* v. *St. Ethelburga*, [1900] P. 80; *Markham* v. *Shirebrook*, [1906] P. 239; 22 T. L R. 278.

(*p*) *Re Paignton*, [1905] P. 111; *St. John*, *Clevedon*, [1909] P. 6; *St. Paul*, [1909] P. 245.

use in the services or of possible superstitious reverence, a faculty will possibly be granted (*q*).

CUP. There seems to be no direction as to the material of which the communion cup should be made, though the pot or stoop in which the wine is required to be brought to the table, must be of pewter, if not of purer metal (*r*). (*See* LORD'S SUPPER.)

CURATE. Formerly a curate was simply a clerk with cure of souls (Fr. *curé*), and in this sense it is used in the Prayer Book; but now the term is applied only to the assistant of such a clerk. It is doubtful whether there was any functionary in the Church before the Reformation corresponding precisely to the stipendiary curate of the present day, but that such a class of persons existed at the beginning of the 17th century is plain from the canons of 1603 (*s*). They seem to have arisen in order to supply the place of non-resident incumbents.

A curacy is considered not to be an ecclesiastical promotion or dignity within s. 14 of the Act of Uniformity. Therefore a deacon may hold the office. A deacon, however, cannot properly hold a *sole charge* of any kind, as he is unable to administer the Lord's Supper.

Curates must be licensed by the archbishop or bishop, and such licence may be revoked (*s*). Before the licence is granted, the following declaration, known as "the Stipendiary Curates' Declaration," must be made:—

"I, *A. B.*, incumbent of , in the county of , *bonâ fide* undertake to pay to *C. D.*, of , in the county of , the annual sum of pounds as a stipend for his services as curate; and I, *C. D.*, *bonâ fide* intend to receive the whole of the said stipend.

"And each of us, the said *A. B.* and *C. D.*, declares that no abatement

(*q*) *Hughes* v. *Edwards* (1877), L. R. 2 P. D. 361; *St. Anselm*, [1901] P. 202.

(*r*) Can. 20.

(*s*) 1 & 2 Vict. c. 106; *Poole* v. *Bishop of London* (1861), 14 Moo. P. C. 281; Cans. 47 and 48. *And see post*, DISMISSAL.

is to be made out of the said stipend in respect of rent or consideration for the use of the glebe house, and that I, *A. B.*, undertake to pay the same, and I, *C. D.*, intend to receive the same, without any deduction or abatement whatsoever."

This declaration must be signed by both curate and incumbent (*t*).

There is no stamp duty on the licence when the annual amount of the stipend is specified therein (*u*). The curate must also, on entering his curacy, make the "declaration of assent" (*x*), unless he has been ordained the same day, when he would already have done so, and must repeat it in the presence of the congregation on the first Lord's Day on which he officiates (sect. 8). This is called "reading in" (*q. v.*).

The payment of curates in an ordinary case is a matter of arrangement between the incumbent and curate, the incumbent appointing his own curate or curates, and paying them the agreed stipend.

In the case of non-resident incumbents who neglect to appoint curates (*y*), or of negligent incumbents or of inefficient incumbents so found by a commission (*z*), the bishop may, subject to the approval of the archbishop, appoint curates at the following annual stipends (*a*):—

Population.	Benefice, £400 a-year or under.	Benefice over £400 a-year.
Under 300	Minimum of £80 a-year..	Maximum of £100 a-year;
300 to 499	,, 100 ,,	,, 100 ,,
500 to 749	,, 120 ,,	,, 170 ,,
750 to 999	,, 135 ,,	,, 185 ,,
1,000 and upwards ..	,, 150 ,,	,, 200 ,,

or may (in the case of non-residents) award them the whole annual value of the benefice, if less than such stipend (*b*);

(*t*) 28 & 29 Vict. c. 122, ss. 3 and 6.
(*u*) 54 & 55 Vict. c. 39.
(*x*) *See* OATH.
(*y*) 1 & 2 Vict. c. 106, s. 75.
(*z*) *See* CLERGY, Duties.
(*a*) 1 & 2 Vict. c. 106, ss. 75, 85, 86, 91.
(*b*) *Ibid.* ss. 85, 86.

and in any such case, the curate must pay the outgoings and be liable to all diminution of value except by wilful neglect of the incumbent (*c*). In cases of incompetent incumbents, the bishop may assign to the curate an extra stipend of 70*l*. above the non-resident rates; provided that no more than 150*l*. shall be paid unless the net income of the benefice exceeds 300*l*. a year (*d*). The bishop may assign to the curate or curates serving a benefice during a vacancy a stipend at the rate of 200*l*. a year each, provided such stipend or stipends shall not exceed the net annual income of the benefice (*e*). But this is not to prejudice any proper deductions from or charges on the profits of the benefice (*f*).

Where the population is over 2,000, the bishop may appoint two curates, whose united stipends must not exceed 200*l*. a year. But such appointment is subject to appeal to the archbishop (*g*). In case of age, sickness, or other unavoidable causes of non-residence, the bishop may, with the consent of the archbishop, appoint a smaller stipend than the above minimum (*h*). Where an incumbent of two parishes residing *bonâ fide* in one or the other, employs a curate to do duty interchangeably with himself, the stipend is to be not larger than that allowed by the Act for the larger of such benefices, nor less than would be allowed for the smaller, but if the incumbent employs a curate upon each benefice, the bishop may assign such less stipend as he shall think fit (*i*). Where a curate is permitted to serve in two parishes, the bishop may assign a stipend for the second curacy less by a sum not exceeding 30*l*. than the stipend to be given under this Act (*k*). All agreements as to stipends for curacies which are contrary to the Pluralities Acts are void to all intents and purposes (*l*).

The only fee payable to the bishop's secretary by the

(*c*) *Ibid.* ss. 91, 92.
(*d*) 48 & 49 Vict. c. 54, s. 8.
(*e*) *Ibid.* s. 10.
(*f*) *Ibid.* s. 11; and see 1 Vict. c. 23, s. 15; 1 & 2 Vict. c. 106, ss. 91, 92, 94.
(*g*) 1 & 2 Vict. c. 106, s. 86.
(*h*) *Ibid.* s. 87.
(*i*) *Ibid.* s. 88.
(*k*) *Ibid.* s. 89.
(*l*) *Ibid.* s. 90.

curate obtaining a licence in the case of non-residence is 10*s*., and there is no stamp duty. The licence must specify the amount of the stipend; and the bishop has power to summarily hear and settle any dispute between incumbent and curate as to stipend without appeal, and to enforce payment of stipend or arrears thereof by monition and sequestration, but application must be made to the bishop within twelve months after the curate has left his curacy or has died (*m*).

In a case where an incumbent agreed to employ a curate, giving him board and lodging in lieu of part of the stipend, and differences arose as to the board and lodging, it was held that the curate was entitled to bring an action for damages in the High Court; it being considered that it was not the intent of the Act to constitute the bishop a judge without a jury to assess damages (*n*).

Licences to curacies and revocations under this Act must be entered in a book in the diocesan registry, and be open to inspection (fee 3*s*.), and copies are to be furnished to churchwardens for which the incumbent must pay 3*s*. (*o*).

The curate applying for a licence has to furnish the same particulars as a person applying for a licence for non-residence (*p*). The bishop may direct the curate to reside in the parsonage house, and assign to him a portion of the glebe not exceeding four acres (*q*). The curate must reside in the parish, or if no convenient residence can be found in a parish, within three statute miles of the church; except in cases of necessity to be approved by the bishop (*r*).

In the case of large benefices, where the value exceeds 500*l*., and there is either a population of 3,000, or a second church with a district containing 400 persons, the bishop may insist on the appointment of a curate, to be paid by the incumbent, whether resident or not, at a stipend not exceeding 150*l*., subject to an appeal to the archbishop (*s*).

(*m*) 1 & 2 Vict. c. 106, ss. 83, 90; *R.* v. *Rochester* (1890), 6 T. L. R. 165.
(*n*) *Fraser* v. *Denison* (1888), 57 L. J. Q. B. 550; and see *R.* v. *Rochester*, *ubi sup.*
(*o*) 1 & 2 Vict. c. 106, s. 102.
(*p*) *Ibid.* s. 81.
(*q*) *Ibid.* s. 93.
(*r*) *Ibid.* s. 76.
(*s*) 48 & 49 Vict. c. 54, s. 13.

Where a benefice has been under sequestration for six months, the bishop has power to appoint curates at stipends not exceeding the following sums:—Population not exceeding 500, 200*l.* yearly; over 500 and under 1,000, 300*l.*; exceeding 1,000 and under 3,000, 500*l.*; exceeding 3,000, 600*l.*; provided such stipends shall not exceed in the whole two-thirds of the annual value of the benefice (*t*). A curate may be licensed for the special purpose of third or additional services, at a salary not exceeding 80*l.*, unless augmented by voluntary subscriptions. Such salary may be raised from pew rents (*u*). On the bankruptcy of his incumbent, a curate is entitled to the payment by the sequestrator of arrears of salary for four months before the date of the receiving order, not exceeding 50*l.* (*x*).

It is the incumbent's duty to see that income tax is duly paid, if the curate's stipend is 150*l.* or upwards.

Dismissal. A curate may be dismissed by a new incumbent on six weeks' notice, provided such notice is given within six months from the time of his admission to the benefice. In all other cases the incumbent, whether resident or non-resident, must first obtain the written permission of the bishop; he may then give the curate six months' notice to quit (*y*). This notice should be, though it need not be, in writing, and the formalities of sect. 112 of the Pluralities Act, 1838, do not apply to it (*z*). If the bishop refuses his consent to the dismissal, a resident incumbent or a non-resident one desiring to reside, may appeal to the archbishop (*a*), who must hear the appellant before deciding, and whose judgment is then final (*b*). A curate desiring to quit his curacy must give three months' notice to the incumbent and bishop under penalty of losing six months' stipend (*c*).

Clergymen appointed to the office of church clerk or parish

(*t*) 34 & 35 Vict. c. 45.
(*u*) 58 Geo. 3, c. 45, ss. 65, 66.
(*x*) 46 & 47 Vict. c. 52, s. 52.
(*y*) 1 & 2 Vict. c. 106, s. 95. See *R.* v. *Rochester* (1890), 6 T. L. R. 165.
(*z*) *Tanner* v. *Scriviner* (1888), 13 P. D. 128.
(*a*) 1 & 2 Vict. c. 106, ss. 95, 98.
(*b*) *Poole* v. *Bishop of London* (1861), 14 Moo. P. C. 262.
(*c*) 1 & 2 Vict. c. 106, s. 97.

clerk can be proceeded against under the Pluralities Acts as if they were licensed curates (*d*).

A curate may act in the absence of the incumbent in many matters, *e.g.*, election of minister's churchwarden, parish clerks, and perhaps presiding at vestry meetings (*e*).

A "perpetual curate" is practically the same as a vicar (*q. v.*).

DAILY SERVICE. (*See* PUBLIC WORSHIP.)

DEACON (Gr. διακονος, a servant). Deacons have always existed in the Church as the servants or helpers of the bishops, presbyters, or elders (*f*). They now, in the Greek and English Churches, form the lowest of the three Holy Orders. No one can be ordained deacon in the English Church under the age of twenty-three years "complete," unless he has a faculty from the Archbishop of Canterbury (*g*). (As to other qualifications for the office, *see* ORDERS.)

The deacon in the post-Reformation Church was evidently intended to be a mere assistant of the priest. And that is the extent of the commission he receives from the bishop at his ordination, his duties being thus set forth in the ordinal:—"To assist the priest in Divine Service, and especially when he ministereth the Holy Communion, and to help him in the distribution thereof, and to read Holy Scriptures and Homilies in the church, and to instruct the youth in the catechism; in the absence of the priest to baptize infants and to preach if he be admitted thereto by the bishop, to search for the sick poor and impotent people of the parish, to intimate their names to the curate" (*i.e.*, incumbent). But by virtue of various Acts of Parliament his duties were extended so that up to, and for some time after,

(*d*) 7 & 8 Vict. c. 59, s. 2.
(*e*) *But see* VESTRY.
(*f*) See Acts, cc. 6 & 8; 1 Tim. 3; Phil. i. 1.
(*g*) Preface to Ordinal, confirmed by 44 Geo. 3, c. 43, the second section of which expressly reserves the archbishop's right of granting a faculty.

1662 he could legally and regularly hold a living (*h*). A deacon can now do everything which a priest can do, except hold a benefice or ecclesiastical dignity, and "consecrate and administer" the sacrament of the Lord's Supper. This is forbidden him under a penalty of 100*l*. for every offence (*i*). But he may baptize, marry (*k*), and bury (*l*), read the whole of the Morning and Evening Service, including the Absolution (*q. v.*), and the greater part of the Communion Service, and collect the alms (*q. v.*) at the offertory. He may be curate to a beneficed clergyman, a lecturer in a church, or chaplain to a family.

The vestments of a deacon are the same as those of a priest, save that by custom he wears his scarf or tippet over the left shoulder (*m*).

In the Greek Church the office of deacon is a reality, and a deacon as well as a priest is attached to every church. But in the Church of England the diaconate is merely a stepping stone to the priesthood, the vast majority being ordained priests in about a year's time, and the utility of preserving the order in its present form has been much questioned. It has been suggested, as the Church cannot afford to pay the additional clergy it requires, that deacons should be allowed to follow any secular occupation, and should not be under any disabilities as spiritual persons.

A bill for this purpose, which, however, only applied to persons over thirty years of age, was some years ago brought before Parliament (*n*). Some of the bishops ordain "permanent deacons," but this only means that the candidate is ordained deacon after an easier examination than is usual on condition of making up the deficiency before being ordained

(*h*) 13 Eliz. c. 12, s. 3; 13 & 14 Car. 2, c. 4, s. 13; Bp. Cosin's Visitation Articles, 1662; Works, Vol. 4, 509.

(*i*) 13 & 14 Car. 2, c. 4, s. 14; *Reg.* v. *Millis* (1844), 10 Cl. & Fin. 859.

(*k*) 4 Geo. 4, c. 76, s. 22; *Reg.* v. *Millis*, *ubi sup.*; Watson, p. 259. And see authorities cited in letter of author to the *Guardian* of 25th Jan., 1893; and also see *Guardian* of 11th Jan., 1893.

(*l*) See 10 & 11 Vict. c. 65, s. 29.

(*m*) *See* VESTMENTS.

(*n*) Deacons of the Church of England Bill, sess. 1890.

priest. Such ordinations have, however, been very rare. A great deal of the work of a deacon is now performed by laymen, who are called "Lay Readers." Among Dissenters the diaconate is usually a purely lay office, corresponding more nearly to that of churchwarden than minister. In the Church of Scotland there are lay elders (same word as priest) and deacons in every congregation, whose duty it is to assist the ordained minister. (*See* PUBLIC WORSHIP; LAY MINISTRATION.)

DEACONESS was one of the Holy Orders of the Primitive Church, discontinued in the Western Church about the 5th century, but not in the Eastern till the 12th. It was not revived by the Church of England on its return to primitive customs, though the question is now again being agitated.

DEAN (Lat. *decanus*, being formerly the bishop's chief officer over a tenth of the diocese, or over ten parishes). There are four sorts of deans—(1) A dean who has a chapter (*q. v.*); (2) a dean of a peculiar, who in some cases has a chapter, but is not subject to the bishop's visitation, *e.g.*, Dean of Westminster, Dean of Windsor, Dean of Battle, Dean of the Chapels Royal; (3) a dean who has no cure of souls, but holds a court and has ecclesiastical jurisdiction, *e.g.*, Dean of Arches (*q. v.*), Dean of Bocking, in Essex; (4) rural dean (*q. v.*) (*o*). All deans of chapters are now appointed by the royal letters patent (*p*). The persons appointed must have been six complete years in priest's orders, and therefore thirty years of age (*q*). A dean is the archpresbyter of the diocese. Some authorities say he is inferior in dignity only to the bishop, while others claim this position for the diocesan chancellor, and others for the archdeacon (*r*). He is styled the "Very Reverend," and is entitled to a seat in the Lower House of Convocation. The

(*o*) Pet. Abgt., tit. Ecc. Persons, and see Burn.

(*p*) 3 & 4 Vict. c. 113, s. 24; 6 & 7 Vict. c. 77, s. 1.

(*q*) 3 & 4 Vict. c. 113, s. 27.

(*r*) Gololphin, App. 5; Ayliffe, 95; *Parham* v. *Templer* (1820), 3 Phill. 223; Reeve's Eng. Law IV. 5.

incomes of the deans have been fixed as under:—Durham, 3,000*l.*; St. Paul's, Westminster, and Manchester, 2,000*l.*; the others, 1,000*l.*, except the four Welsh deans, 700*l.* each. The stipend varies in the new dioceses (*s*), some of which have no dean at all, the bishop acting as dean, but without prejudice to his episcopal rights. Every dean must reside at least eight months in the year (*t*), and a decanal residence is usually provided (*u*). His duty is to preach the Word of God and keep good hospitality (*x*). The Bishop of London is dean of the province of Canterbury. There is also an officer styled a sub-dean (*y*).

A dean can resign, and if legally found a lunatic may be compulsorily retired by the bishop, under the Deans' and Canons' Resignation Act, 1872, on a pension of one-third of the income, or (if he holds no other preferment) of not less than 400*l.* a year in England and 300*l.* in Wales. The Archbishop of Canterbury, on behalf of his Majesty (for the purposes of this Act), acts as bishop in the case of St. George's, Windsor; Christchurch, Oxford; and Westminster Abbey (*z*).

The fees payable on installation to a deanery amount to about 10*l.* (For particulars, *see* FEES.)

DECLARATIONS. (*See* OATHS.)

DE CONTUMACE CAPIENDO. The writ under which disobedience to the ecclesiastical courts is punished by imprisonment. By 53 Geo. 3, c. 127, s. 2, where a lawful citation or sentence has not been obeyed, or where a contempt in face of the Court has been committed, the judge has power to pronounce such persons *contumacious* and in contempt, and within ten days to signify the same to the High Court of

(*s*) See Truro Act, 50 & 51 Vict. c. 12, s. 9.

(*t*) 3 & 4 Vict. c. 113, s. 3, and Can. 42. *And see* PLURALITIES *and* RESIDENCE.

(*u*) See 6 Edw. 7, c. 19.

(*x*) Can. 42.

(*y*) 3 & 4 Vict. c. 113, s. 2; 50 & 51 Vict. c. 12, s. 7; *Braithwaite* v. *Hook* (1862), 8 Jur. N. S. 1186.

(*z*) 35 & 36 Vict. c. 8.

Justice, formerly to the Court of Chancery (*significavit*), whereupon the writ issues, and has the same force as formerly belonged in a case of contempt to the writ *de excommunicato capiendo* (*a*). The Dean of Arches has power to signify for contempt (*b*).

The power to issue the writ is not confined to cases where obedience to the order remains possible. Thus it has been held, that if a clerk is suspended for six months and officiates in breach of his suspension, and the six months expires, it is then *not* too late to issue a writ *de contumace capiendo* (*c*).

It is now universally conceded that deprivation ought in all cases to be substituted for imprisonment in the case of clergymen offending against the laws ecclesiastical. There can be no real reason why a clergyman of the Church of England should be punished in a different manner from the ministers of dissenting churches.

DECORATIONS. (*See* ORNAMENTS.)

DEGRADATION or DEPOSITION is the taking away of Holy Orders from a clergyman. This may be done (1) by the Ecclesiastical Court as a punishment (*d*), (2) by the clergyman himself under the Clerical Disabilities Act, 1870. (*See* RELINQUISHMENT.) The Eastern Church also allows a priest to divest himself of his orders and become a layman (*e*). Indelibility of orders is a peculiarity of the Roman Church, a wall of separation that Rome has raised between the ecclesiastic and the layman (*e*).

DEPRIVATION. The taking away from a clergyman his benefice or ecclesiastical preferment. This may be effected (1) by sentence declaratory in the proper Court for fit and

(*a*) *See* EXCOMMUNICATION, and 2 & 3 Will. 4, c. 93; 3 & 4 Vict. c. 93.
(*b*) *Dale's case. See* ARCHES.
(*c*) *Ex parte Bell-Cox* (1887), 20 Q. B. D. 1. Reversed, but not on this point, 15 App. C. 506.
(*d*) See Gib. 1066, and C. D. A. 1892.
(*e*) Stanley's Eastern Church, p. 44.

sufficient causes, such as conviction for treason or other infamous crimes; for smaller offences, such as drunkenness and dilapidations in aggravated cases (*f*); for heresy, infidelity, gross immorality, and the like; for incorrigibleness and obstinate disobedience to the approved canons of the Church, as also to the ordinary (*g*); or for farming or trading contrary to law after two former convictions for the same offence (*h*); (2) by the benefice becoming *ipso facto* void without any formal sentence of deprivation on proof of want of orders, or the commission by the incumbent of the following offences:—Simony (*q. v.*), plurality (*q. v.*), maintaining any doctrines in derogation of the sovereign's supremacy (*i*), or of the 39 Articles (*q. v.*), or of the Book of Common Prayer; for neglecting to duly read himself in, or for using any other form of prayer than the Liturgy of the Church of England, or for continued neglect after order of the bishop, followed by sequestration, to reside on the benefice (*k*). Also on conviction for treason or felony, for which the convicted person shall be sentenced to death, or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve months, unless he shall receive a free pardon from his Majesty within two months after such conviction, or before the filling up of the benefice (*l*). In some cases suspension (*q. v.*) may be substituted for deprivation.

The sentence of deprivation is usually pronounced by the judge of a Provincial Court, or by a bishop. The ordinary sentence of deprivation extends to all ecclesiastical promotions within the jurisdiction held at the time that the sentence is pronounced, and all ecclesiastical emoluments thereto belonging (*m*).

(*f*) See *Combe* v. *De la Bere* (1881), 6 P. D. 165; *Borough* v. *Collins* (1890), 15 P. D. 81.

(*g*) Ayliffe, par. 208, cited 6 P. D. 163.

(*h*) *See* CLERGY.

(*i*) 1 Eliz. c. 2; 13 Eliz. c. 12.

(*k*) *See* RESIDENCE, and 2 Ste. Com. 706. See *Combe* v. *De la Bere*, *ubi sup.* *See* CHURCH DISCIPLINE ACT.

(*l*) 33 & 34 Vict. c. 23, s. 2. As to the effect of the Queen's pardon, see *Hay* v. *Justices, &c.* (1890), 24 Q. B. D. 561.

(*m*) *Martin* v. *Mackonochie* (third suit) (1883), 8 P. D. 191; *Oxford* v. *Henly*, [1909] P. 319.

The King in Council has power to deprive, the supreme ecclesiastical power being in him. Also, wherever there is a visitatorial power there is a power of deprivation (*n*). Thus the King can deprive an archbishop; an archbishop, a bishop; and a bishop, an incumbent, but not *summarily* (*o*).

DILAPIDATIONS. It is the duty of the incumbent of a benefice to keep the buildings free from dilapidations, and to leave them so on his death or resignation. He is bound to keep the parsonage-house buildings (and if a rector the chancel) in good and substantial repair, restoring and rebuilding when necessary, according to the original form, without addition or modern improvement; but he is not bound to supply or maintain anything in the nature of ornament, such as painting (unless that be necessary to preserve exposed timber from decay) and whitewashing, and papering (*p*). He is only bound to restore what is actually in decay, and need not leave the premises in a *finished* state of repair (*q*). Thus, neglect to cultivate the glebe land in a husbandlike manner (*r*), and digging gravel in the glebe (*s*), are not dilapidations for which the executors of a deceased incumbent may be sued, although it may be waste for which he could have been restrained or punished in his lifetime.

Before the passing of the Ecclesiastical Dilapidations Act, 1871, upon the avoidance of a benefice by death, resignation, or otherwise, it was the duty of the late incumbent to leave the buildings free from dilapidation By the statute no new duty was imposed on him; his duty and liability remain as before, but new machinery is provided for enforcing them (*t*). This Act is amended by the Dilapidations Act of 1872, and the two are to be read together. Within three months after

(*n*) Ld. Raym. 541, cited 6 P. D. 167.

(*o*) See *Combe* v. *De la Bere, ubi sup.*; CHURCH DISCIPLINE ACT; and 2 Ste. Com. 686; *Dean of York's case* (1841), 2 Q. B. 1.

(*p*) *Wise* v. *Metcalfe* (1829), 10 B. & C. 299; 5 M. & R. 235.

(*q*) *Percival* v. *Cooke* (1826), 2 Car. & P. 460.

(*r*) *Bird* v. *Relfe* (1833), 1 Nev. & M. 415; 4 B. & Ad. 826.

(*s*) *Ross* v. *Adcock* (1868), L. R. 3 C. P. 655.

(*t*) *Per* Brett, L. J., in *Wright* v. *Davies* (1876), 1 C. P. D. 647.

the avoidance of a benefice, the bishop is to direct (*u*) the diocesan surveyor appointed under the Act (see ss. 8—11) to inspect and report to the bishop what sum is required to make good the dilapidations (s. 29). Objections may be taken to this report by the new incumbent or the late incumbent, his executors or administrators, but they must be transmitted to the bishop, in writing, within one month after receipt of a copy of the report by the objecting party (ss. 32 and 33). The bishop is to make an order, specifying the repairs to be done and their cost (s. 34), which sum is to be a debt due from the late incumbent, his executors or administrators, to the new incumbent, and recoverable as such in law or equity (s. 36), and such debt is payable *pari passu* with other debts (*x*).

The money so received is to be paid to the Governors of Queen Anne's Bounty (s. 37) to the "Dilapidations Account" of the particular living (s. 39), and the repairs are to be done by the new incumbent and paid for out of such fund so far as it will go; and, if necessary, the governors will advance any unpaid part of the dilapidation moneys, not exceeding in the whole three years' net income of the benefice, to the new incumbent upon the security of the possession of the benefice (s. 38) (*y*). The new incumbent must execute the repairs within eighteen months after date of the order, unless he decides to rebuild the premises (s. 42). When the repairs are finished the surveyor gives a certificate of completion (s. 46); and the new incumbent, his representatives and successors, will not be liable to any claim for dilapidations for five years from the date of the certificate, except for wilful waste or neglect to insure against fire in at least three-fifths of the value (s. 47). An inspection and report may be ordered by the bishop at the request of the

(*u*) The direction may be given after the three months are up: *Gleaves* v. *Marner* (1876), 1 Ex. D. 107; and *Caldow* v. *Pixell* (1877), 2 C. P. D. 562.

(*x*) *Re Monk* (1887), 35 Ch. D. 583; *De Beauvais* v. *Green* (1906), 22 T. L. R. 816. As to set-off against a retiring pension, *see* RESIGNATION.

(*y*) See also as to these loans under INCUMBENT.

archdeacon, rural dean, patron, or incumbent, at other times than when a benefice is vacant (s. 12); and the proceedings are conducted in a similar way, and the money required for the repairs raised by sequestration if necessary (s. 23).

Where a benefice is under sequestration, the sequestrator may object to the report as well as the incumbent (s. 16). After the report becomes final he may not expend on repairs more than the sum mentioned therein (*z*). Where the complaint is made by the archdeacon, rural dean, or patron, if the incumbent shall within twenty-one days after notice inform the bishop, in writing, that he intends forthwith to put his buildings in proper repair, the bishop shall allow the incumbent a reasonable time to execute such repairs, and if satisfied shall abstain from further proceedings; but the bishop may at any time afterwards, if necessary, direct the surveyor to report and put in force the powers of the Act (s. 22).

Dilapidations on episcopal estates are now dealt with by the Ecclesiastical Commissioners, except in the case of a house of residence (*a*). Under the Act of 1871 any archbishop, bishop, dean, or canon, who is bound by law or custom to keep in repair a house of residence or other building, may employ any surveyor approved by the Ecclesiastical Commissioners to inspect such building (s. 25) and to report what works are needed, and within what time they ought to be executed (s. 26). When the works are executed the surveyor is to file a certificate in the diocesan registry (s. 27), and for a period of five years from such filing the archbishops, &c. are protected from further liability, except for wilful waste and neglect to insure against fire (s. 28). The fees under these Acts are regulated by a uniform table for the whole of England and Wales under sect. 3 of the Act of 1872 (*b*).

An exchange of livings without any payment for dilapidations on either side is not necessarily simoniacal, and to upset

(*z*) *Kimber* v. *Paravicini* (1885), 15 Q. B. D. 222.

(*a*) 29 & 30 Vict. c. 111, ss. 12, 13.

(*b*) *See* The Diocesan Calendars.

an agreement of that kind fraud must be shown (*c*). All money received for dilapidations and not laid out in repairs, may be applied towards building a new house of residence or in making some additional improvements to be approved by the bishop, or if this is not necessary, may be laid out in Government or other good securities and the interest paid to the incumbent (*d*).

DIMISSORY LETTERS. Where a candidate for holy orders has a title (*q. v.*) in one diocese and is to be ordained in another, the proper diocesan sends his letters dimissory to some other bishop, giving leave that the bearer may be ordained, and have such a cure within his district (*e*).

DISPENSATION, or licence (*q. v.*), is a permission to do something otherwise unlawful. Thus, the Archbishop of Canterbury, the Bishops, and the Registrars of Marriages have power to grant licences (*q. v.*) to marry without the preliminaries otherwise needful. All the dispensing power formerly exercised by the Pope of Rome was vested in the Crown by a statute of Henry VIII., and a portion of it concurrently in the Archbishop of Canterbury, unless it offended the laws of God (*f*); but these powers of the Archbishop's have been cut down by subsequent statutes.

DISSENTERS were formerly subject to many disabilities, but it cannot be said that they suffer any great hardships now, except in the matter of tithes and divinity degrees (*g*). They have been relieved from all liability for church rates. The Universities are all open to them (*h*). Roman Catholics are still excluded from certain privileges mentioned later. Dissenting Churches also possess the privilege necessarily

(*c*) *Wright* v. *Davies*, *ubi sup.*
(*d*) 1 & 2 Vict. c. 106, s. 69. *And see* RESIDENCE.
(*e*) Cowel, cit. Wharton, L. L.
(*f*) 25 Hen. 8, c. 21, ss. 3 and 5.
(*g*) Degrees in Divinity are now obtainable by dissenters and laymen at London and some of the new Universities.
(*h*) See 34 & 35 Vict. c. 26, s. 3.

denied to the State Church of making canons or byelaws for their own guidance without the assent of the Crown, and they are able to excommunicate offending members, whether clergy or laity, without having recourse to courts of law. Protestant Dissenters are still to a certain extent members of the Church of England (*i*). They are entitled, for themselves and their families, to its ministrations, baptism, marriage, churching, and burial, if they choose to demand it, and it may be doubted whether they can be refused the Lord's Supper (*q. v.*). A Dissenter (if a parishioner) is entitled to a seat in the parish church, to become churchwarden, and to attend vestry meetings. They may also present to church livings.

A Dissenter may now (since 1867) attend in an official costume, or with the insignia of a judicial, civil, or corporate office, at any place of worship in England, Scotland, or Ireland (*k*).

A dissenting minister equally with a minister of the establishment, is entitled to be styled "reverend" (*q. v.*), and he may now act as a registrar of marriages solemnized by him (if duly authorized) (*l*).

A father has the right, unless he forfeits it by misconduct, to bring up his children in the faith of any Church he pleases; and an ante-nuptial agreement to bring up children as members of a particular church is not binding on the father, or on the Court. The father may change his mind, and such change may, after his death, be gathered from his conduct. The welfare of the children is, however, the paramount consideration (*m*).

Dissenters in England may be divided into two classes—Episcopal and Non-Episcopal.

Episcopal.

(1) ROMAN CATHOLICS or PAPISTS (*n*).—After the

(*i*) *See note on* PUBLIC WORSHIP REGULATION ACT.
(*k*) 30 & 31 Vict. c. 75, s. 4; 10 Geo. 4, c. 7, s. 25, now repealed.
(*l*) 61 & 62 Vict. c. 58.
(*m*) *Re Nevin*, [1891] 2 Ch. 299; *Re Newton*, [1896] 1 Ch. 740.
(*n*) *I.e.*, according to the law of

Reformation English Roman Catholics, owing to their attempts to regain their lost position, were placed under many disabilities, most of which have been removed (*o*). They may now hold any office whatever with the exception of the following:—Guardian or Regent of the Kingdom, Lord Chancellor of England or Keeper of the Great Seal, Lord Lieutenant of Ireland, High Commissioner to the Church of Scotland, any office in the Churches of England or Scotland, or in the Ecclesiastical Courts. They may also exercise any franchise or civil right whatever, except in certain cases where their doing so would presumably be prejudicial to Protestantism, as in the case of presenting to a benefice (*p*). They may not exercise their religious rites or ceremonies, or wear the habits of an order, except in their usual places of worship, or in private houses, under a penalty of 50*l*. (*q*). Jesuits and male members of other religious societies of the Church of Rome bound by monastic or religious vows (unless specially licensed or registered) are not allowed to dwell in the United Kingdom. A natural-born subject, if registered within six months, may reside permanently (penalty for not giving particulars for registration, 50*l*.), but others cannot be granted a licence to reside for a longer period than six months, under pain of banishment for life (*r*), the object of the statute being the gradual suppression and final prohibition of these religious societies (*s*). Private persons may prosecute under the Act (*t*).

(2) FREE CHURCH OF ENGLAND.—This Church was

England. Of course, *theologically* and *ecclesiastically*, Anglicans are dissenters from Romanism.

(*o*) See 18 Geo. 3, c. 60; 31 Geo. 3, c. 32; 43 Geo. 3, c. 30; 10 Geo. 4, c. 7; 2 & 3 Will. 4, c. 115; 7 & 8 Vict. c. 102; 9 & 10 Vict. c. 59; 23 & 24 Vict. c. 134, s. 7; 30 & 31 Vict. cc. 62 and 75; 31 & 32 Vict. c. 72, s. 9; 34 & 35 Vict. c. 26, s. 48. See *R. C. Disabilities*, by the author.

(*p*) 2 Ste. Com. 722.

(*q*) 10 Geo. 4, c. 7, s. 26.

(*r*) *Ibid.* ss. 28—38; *Rex* v. *Kennedy* (1902), 86 L. T. 753.

(*s*) *Ibid.* s. 28.

(*t*) *Rex* v. *Kennedy*, *ubi sup.*

founded in 1844. Its principles are evangelical or Low Church. Being free from State control, its object is to provide parishes, where ritualistic practices prevail, with the ordinary Church Service. It is governed by Convocation and bishops, who are said to have a "valid" apostolic succession through the Right Rev. Bishop Cummins, of the United States Church.

(3) MORAVIANS and IRVINGITES also have an episcopal constitution. (*See also* GREEK CHURCH.)

Non-Episcopal.

(4) WESLEYAN METHODISTS.—This Church, founded by John and Charles Wesley, was originally intended to be a religious society within the Church of England. It has no bishops in England, but in America some of its branches are episcopal. It is estimated to include over 30,000,000 adherents throughout the world.

(5) PRESBYTERIAN CHURCH OF ENGLAND, in which holy orders are conferred by presbyters or priests, and not by bishops. This Church played a conspicuous part in the time of Cromwell. It now consists of about 288 fully organized congregations, some of which date back to the 17th century. One feature of this Church, which the Established Church would do well to copy, is the Sustentation Fund, by means of which the ministers (excluding a limited number under special arrangements) are secured a minimum income of 200*l.* a year.

(6) CONGREGATIONALISTS or INDEPENDENTS.—A federal union of several thousand autonomous local churches. It has two orders of church officers only, bishops elders or pastors; and deacons (who have charge of its secular affairs). It asserts that it represents most closely the apostolic form of church government. It has numerous members all over the world.

(7) BAPTISTS are the representatives of very ancient Church views. They do not allow infants to be baptized; only adult believers, and by immersion.

Throughout the world this Church is estimated to have 5,000,000 Church members, but, of course, many regular worshippers being unbaptized are not Church members. Their Church Government is similar to that of the Congregationalists.

Since 1727 the Presbyterians, Congregationalists, and Baptists have been associated under the name of "The Three Denominations," and enjoy—like the established clergy of London and the three great universities, Oxford, Cambridge and London—the privilege of approaching the Sovereign on the Throne (*u*).

(8) UNITARIANS are now a recognized Christian sect. They also are the representatives of very ancient Church views. They do not form a large community, but their doctrines are said to be spreading in the Church of England and among other sects.

(9) SALVATION ARMY.—A large and increasing religious society, organized on military lines, with a "general" (Rev. Wm. Booth) at the head. It directs its attention especially to the degraded classes ("the submerged tenth"). The publication of the General's book, "In Darkest England and the Way Out," created a great sensation. The Army was originally founded by the Rev. Mr. Booth, then a dissenting minister, in 1865, and re-organized under its present name in 1878.

In addition to these there are over 200 other sects.

In Wales.—The established Church of Wales (*q. v.*) forms part of the Church of England, but it is said not to comprise more than about one-fourth of the population, though the estimates vary (*x*). The principal dissenting Church is the Welsh Calvinistic Methodist Association, founded in 1735

(*u*) Winslow's "Law relating to Protestant Nonconformists," p. 43.

(*x*) See Report of the Royal Commission on the Church of England and other religious bodies in Wales and Monmouthshire, 1910.

as a religious society within the Church, and became a distinct sect in 1810. Its form of church government is Presbyterian. Its creed comprises the doctrinal Articles of the Church of England, the Apostles' Creed, and the Assembly's shorter Catechism. The dissenting bodies before mentioned are also found in Wales, especially the Congregationalists, Baptists and Wesleyans.

In Scotland.—The Church of Scotland (*q. v.*), which is the established Church and in possession of the property of the ancient Scotch Church, is Presbyterian. The Dissenters comprise—

(1) The Free Church of Scotland (Presbyterian);
(2) The United Free Presbyterian Church;
(3) The Protestant Episcopal Church of Scotland, which is in communion with the Church of England;

and the other sects previously mentioned.

In Ireland.—There is now no established Church, and consequently no dissenters. The Church of Rome has the largest following, but the (formerly established) Church of Ireland (*q. v.*), which is in communion with the Church of England, is in possession of the ancient cathedrals and churches. (*See* CHURCH.)

DIVORCE is so called from *divertendo*, because a man is diverted from his wife (*y*). All questions of divorce are now decided by the Probate, Divorce, and Admiralty Division of the High Court of Justice. The Ecclesiastical Courts have no longer jurisdiction (*z*). The teaching of the Church is that divorce is permissible for adultery, and that the divorced person may marry again (*a*); but no clergyman of the Church

(*y*) Co. Litt. 235.

(*z*) 20 & 21 Vict. c. 85, and various amending Acts; Dixon on Divorce. *And see* MARRIAGE.

(*a*) Matt. v. 32, xix. 9. Homily against adultery, 2nd part: "For whereas the Jews used of a long sufferance by custom to put away their wives at their pleasure for every cause; Christ, correcting that evil custom, did teach that if any man putteth away his wife *and marrieth*

of England can be compelled to solemnize the marriage of a *guilty* divorcee (*b*). A divorce must not be confused with a declaration of nullity of marriage (as to which, *see* MARRIAGE). Prior to 1857, divorces were of two kinds, *a mensâ et thoro* and *a vinculo*. The former (now called a judicial separation) was obtainable in the Ecclesiastical Courts; the latter (divorce proper) only by special Act of Parliament. A man may not marry his *divorced* wife's sister during the lifetime of such wife (*bb*).

DONATIVES are now abolished. (*See* ADVOWSON; LAPSE.)

DUPLEX QUERELA (double complaint) is the technical name of an appeal from a bishop's refusal to institute to a living (*c*). The civil procedure in a case of this kind is by an action in the Queen's Bench Division, and is in the nature of a *quare impedit* (*q. v.*). But in cases coming under sect. 3 of the Benefices Act, 1898, no proceeding in the nature of *quare impedit* or *duplex querela* can be taken in respect of a refusal to institute (*d*).

DUTIES, ECCLESIASTICAL. (*See* CLERGY, PUBLIC WORSHIP, INCUMBENT, CHURCHWARDEN, &c.)

EASTER (from the name of a Teutonic goddess; usually called *pascha*, from the passover; Fr. *pâques*). Easter Day

another for any cause except only for adultery (which then was death by the law) he was an adulterer, and forced also his wife, so divorced, to commit adultery if she were joined to any other man, and the man also so joined with her to commit adultery." The views of the Anglican episcopate at the Lambeth conferences are to the like effect. This is also the teaching of the Greek Church, Presbyterians and other sects. The Roman Church teaches that marriage is indissoluble, but provides many grounds of nullity. Many members of the Church of England favour the Romish view, and cite the marriage service as their authority. But that service naturally does not contemplate judicial separation or divorce any more than an entail contemplates a bar.

(*b*) *See* MARRIAGE.

(*bb*) 7 Edw. 7, c. 47, s. 3.

(*c*) See Burn, tits. Double Quarrel and Benefice.

(*d*) 61 & 62 Vict. c. 48, s. 3 (5). *And see* INSTITUTION.

is the Feast of the Resurrection, and is kept on the first Sunday after the first full moon after the 21st March, and all the other movable feasts are reckoned from it (*e*).

EASTER OFFERINGS are oblations due to the clergy. Some authorities say that they are due by the common law at the rate of 2*d*. per head for all persons inhabiting within a parish of the age of sixteen and upwards. Others say that Easter Offerings are due by custom only, and not of common right. It has been decided that where there is sufficient evidence of a custom, the common law claim (supposing it to exist) will be excluded. Thus, in a case where the customary Easter Offerings were proved by the production of terriers to be "Every communicant, 2*d*.; every cow, 2*d*.; every plough, 2*d*.; every foal, 1*s*.; every hive of bees, 1*d*.; every house, $3\frac{1}{2}d$.;" it was held (1) that the common law right was excluded; (2) that the word communicant did not override the whole clause, but that each item was an independent charge, and payable by every parishioner, whether he came within the denomination of communicant or not; (3) that in the absence of evidence to the contrary, "communicant" meant only those who actually communed; (4) that the custom attached to any house as soon as built and occupied, and was not confined to ancient houses (*f*).

EASTWARD POSITION. In the primitive Church (as in most Protestant churches now) the minister took the westward position at the Lord's Supper, *i.e.*, he stood behind the Communion table facing the congregation (*g*). Subsequently the eastward position was introduced. In the reformed Church of England the *proper* position of the priest at the Lord's Supper is always facing south, *i.e.*, he should stand

(*e*) See Calendar in Prayer Book.

(*f*) *Queen* v. *Hall* (1866), L. R. 1 Q. B. 632. See Rubric at end of Communion Service, and 2 & 3 Edw. 6, c. 13; and as to income tax *see* TAXES.

(*g*) See Smith's Dict. of C. A. 68, and an illustrated pamphlet by J. T. Tomlinson, "The Liturgy and the Eastward Position." Price 2*d*. The table may be moved. *See* LORD'S TABLE.

on the north side or north end of the Holy Table, the object being that the people may see and hear to the best advantage, and especially may see the minister break the bread and take the cup into his hands, which they cannot very well do if he stand with his back to the people. This rule was approved of, both in the *Purchas* and *Ridsdale cases*. In the *Purchas case* the Privy Council held that the standing with back to the people at the Consecration Prayer is not warranted in the Church of England by law or custom (*h*); but in the *Ridsdale case* it was laid down that all the minister is bound to do (during the Prayer of Consecration) is to stand "so that he may in good faith enable the communicants present, or the bulk of them, being properly placed, to see, if they wish, the breaking of the bread and the performance of the other manual acts mentioned" (*i*). The *Purchas case* is, on principle, the binding authority and can only be reversed by Act of Parliament (*k*). The *Ridsdale* view was followed in the *Lincoln case*, in which Archbishop Benson said: "The order of Holy Communion requires that the manual acts should be visible." But, even under the *Ridsdale* judgment, if the minister stands anywhere except on the north side, it is at his own risk as to penal consequences, if it can be proved that the people could not see (*l*). It has further been held in the *Lincoln case* that, although the north side is expressly mentioned in the rubric, it is not illegal for the minister to stand at the north end of the west side from the commencement of the Communion Service to the ordering of the bread and wine before the Prayer of Consecration (*m*).

(*h*) *Hebbert* v. *Purchas* (1871), L. R. 3 P. C. 633, and the offending minister was duly punished; see 4 P. C. 301.

(*i*) *Ridsdale* v. *Clifton* (1877), 2 P. D. 341.

(*k*) *London Street Tramways, Ld.* v. *London County Council*, [1898] A. C. 381. *And see* APPEAL.

(*l*) *Ridsdale* v. *Clifton* (1877), 2 P. D. 344; *Read* v. *Bishop of Lincoln*, [1891] P. 63.

(*m*) *Read* v. *Bishop of Lincoln*, *ubi sup.*, p. 56, and on appeal, [1892] A. C. 644. This decision was arrived at on the assumption that in 1552 the table regularly stood "lengthwise," whereas the contemporary authorities show clearly that there was no fixed rule, but the practice was in favour of the "crosswise" position. There seems to be no authority for the exclusive use of the "lengthwise" position prior to

Archbishop Benson was distinctly of opinion that the eastward position does not convey any "sacrificial doctrine of the Eucharist against the doctrine of the English Church." He said also, "a place at the west side of the Holy Table has not in the past been invested with sacrificial character." It may, however, be doubted whether these are correct statements of *fact*.

ECCLESIASTICAL COMMISSIONERS for England, established by Act of Parliament in 1836, are a corporate body holding a large amount of Church property, and having power to make schemes with reference thereto, which schemes, when duly confirmed by Order in Council and gazetted, have the same force as Acts of Parliament (*n*). The Commissioners are about fifty in number, and include the archbishops, bishops, some of the deans, judges, officers of State, and eminent laymen (*o*). The Act greatly broke in upon the principle that the Church, as a corporation, possesses no property. Various alterations in the constitution and powers of the Commission have been made by subsequent Acts (*p*). The lands and emoluments of the archbishoprics and bishoprics (except patronage and lands attached to residences) are now in some cases vested in the Ecclesiastical Commissioners (*q*). The emoluments of certain deaneries and canonries which have been abolished go to the Ecclesiastical Commissioners (*r*); also sinecure rectories, together with the remedies of the former owners (*s*).

Archbishop Williams' time. See Tomlinson on *Lambeth Judgment*. The *Lincoln Judgment* on this point contradicts *Hebbert* v. *Purchas* and *Ridsdale* v. *Clifton* (see 2 P. D. 341), and would therefore seem to be *pro tanto* bad law. See note (*k*), *supra*, and APPEAL.

(*n*) 6 & 7 Will. 4, c. 77, ss. 12, 13, 14; and for Orders in Council, see Pulling's Index to London Gazette.

(*o*) For list, see London Directory.

(*p*) See, in addition to Acts cited in this article, Church Seats Acts; Places of Worship Sites Acts, 1873 and 1882; 47 & 48 Vict. c. 67; and for Orders in Council and Statutory Rules, see Index thereto published by authority. Also Pulling's Index to London Gazette.

(*q*) *See* BISHOP.

(*r*) 3 & 4 Vict. c. 113, ss. 49, 50, 51; 4 & 5 Vict. c. 39, s. 6; 31 & 32 Vict. c. 114; 36 & 37 Vict. c. 64.

(*s*) *See* SINECURE; and 3 & 4 Vict. c. 113, s. 57.

The Commissioners expend their funds on church buildings, augmentation of poor livings, the endowment of new churches, &c., and in so doing, though the fund is a common one, they are bound to consider the wants of the places whence the income is derived (*t*). In the augmentation of poor livings they often contribute a certain sum, on condition that the persons interested raise as much.

The Commissioners have power to borrow money of the Governors of Queen Anne's Bounty (*u*); but they may not apply the capital of such loan except under the authority of a scheme confirmed by an Order in Council (*x*).

They may receive contributions towards the endowment funds of new benefices. They have to make annual reports to one of the Secretaries of State, and such reports must be laid before Parliament (*y*).

A Committee of the Commission, entitled the Church Estates Commissioners, regulate the sale (*z*) and letting of land.

ECCLESIASTICAL COURTS, or Courts Christian, are "eccentrical tribunals" which subsist in England, "not by any right of their own, but upon bare sufferance and toleration from the municipal law" (*a*). They are an adaptation and continuation of the old Courts of the Church of Rome. In 1857, the greater part of their ancient jurisdiction was taken away, and is now vested in the Probate, Divorce, and Admiralty Division of the High Court of Justice, but they have still to deal with questions of Church Government and Discipline. If they exceed the limits of their jurisdiction, they are "prohibited" by the High Court of Justice.

The Ecclesiastical Courts are the Archdeacons, Consistory, Peculiars, Arches Court, and Chancery Court of York (Sir

(*t*) *Ibid.* s. 67; 23 & 24 Vict. c. 124, s. 12.
(*u*) 6 & 7 Vict. c. 37, ss. 1—7.
(*x*) *Ibid.* s. 8.
(*y*) 13 & 14 Vict. c. 94, s. 26.
(*z*) As to re-sale, see *Ecc. Com. and King* (1890), 38 W. R. 473; W. N. 1890, 73. As to duties on a sale, see 21 & 22 Vict. c 27, and *Ecc. Com.* v. *Pinney*, [1899] 1 Ch. 106; *Re Bishop of Bath and Wells*, [1899] 2 Ch. 147.
(*a*) See 3 Bla. Com. ch. 3—5.

L. Dibdin), Archbishop's Court, and in cases of Appeal only, the King in Council (*b*). The procedure in these Courts is laid down in the Ecclesiastical Courts Acts, 1787—1860, the Church Discipline and Public Worship Regulation and Benefices Acts (*q. v.*), and in various rules and orders (*c*). In some cases these Courts are not open to everyone, an interest has then to be shown, *e.g.*, being a parishioner (*d*). Except where otherwise directed by statute a suit in the Ecclesiastical Courts is commenced by service of a document analogous to a writ, which is called a *citation* in the Consistory Courts and a *decree* in the Arches Court. Pleadings have then to be delivered on either side and by the interveners (*q. v.*), if any. The name of the first plea, which is analogous to a "statement of claim," varies according to the description of the cause. In *criminal* proceedings it is called *articles*, because it runs in the name of the judge who articles and objects. In plenary causes which are not criminal, and which are usually called *civil*, it is termed the *libel*, and runs in the name of the party or his proctor, who alleges and propounds the facts founding the demand. Every subsequent plea, in all causes, whether responsive or rejoining (*i.e.*, in the nature of statement of defence, reply, or rejoinder), or by whatever party given in, is termed an *allegation* (*e*), though sometimes the "statement of defence" is termed an *act on petition*. The decrees of the Ecclesiastical Courts are enforced by suspension (*q. v.*), deprivation (*q. v.*), degradation (*q. v.*), and by imprisonment under the writ of *de contumace capiendo* (*q. v.*), which supersedes the *de excommunicato capiendo* (*f*). The rules of evidence in the Ecclesiastical Courts are practically the same as in the civil courts (*g*).

(*b*) *See* APPEAL.

(*c*) For the rules of the London Consistory Court, see Tristram's Consistory Judgments, Appendix.

(*d*) *Fagg* v *Lee* (1873), L. R. 4 A. & E. 135; L. R. 6 P. C. 38; *Kensit* v. *Ethelburga*, [1900] P. 80; *Davey* v. *Hinde*, [1901] P. 95; *Noble* v. *Reast*, [1904] P. 34. *And see* CHURCH DISCIPLINE ACT, &c.

(*e*) See Phill. E. L. 1254.

(*f*) *See* EXCOMMUNICATION.

(*g*) *Conway* v. *Beazley* (1831), 3 Hag. Ecc. 651; *Chesney* v. *Newsholme*, [1908] P. 307.

Where an offender is in prison for contempt of Court the contempt must be purged before he can be released, and as imprisonment for contempt is not incident to the Ecclesiastical Courts, but only conferred on them by statute, the release can only be in conformity with the statutes. Thus, in an ordinary case, the judge can only order a release on the "obedience" of the offender (*h*), or with the consent of the parties to the suit (*i*); but it has been held that "involuntary obedience" followed by deprivation is sufficient, as when the offender ceased to be rector of the parish the necessity for his imprisonment ceased also (*k*).

The procedure in Ecclesiastical Courts is very expensive. The case of *Keet* v. *Smith*, which involved a very small point, is said to have cost the *successful* litigants 1,500*l*. (*l*); and a bishop has stated that (prior to the C. D. A. 1892) it cost him a similar sum to eject a drunken clergyman from his diocese.

In the Isle of Man the Ecclesiastical Courts retained their jurisdiction in probate and matrimonial causes up to 1884, when it was transferred to the High Court of the Isle of Man.

The power of the Ecclesiastical Courts over the laity is now practically obsolete.

ECCLESIASTICAL LAW. The Ecclesiastical law of England is not a foreign law (*m*). It is a part of the general law of England—of the common law—in that wider sense which embraces all the ancient and approved customs of England which form law. When a question arises, what is the English ecclesiastical law? it is not ascertained by calling witnesses to prove it, as if it were a foreign law, but by taking judicial notice of what the law is; it is ascer-

(*h*) 53 Geo. 3, c. 127.

(*i*) 3 & 4 Vict. c 93. *And see* DE CONTUMACE CAPIENDO.

(*k*) *Dean* v. *Green* (1882), 8 P. D. 91. *But see* DE CONTUMACE CAPIENDO.

(*l*) Urlin's Legal Guide, p. 76. *And see* REVEREND. And see Judicial Statistics, Part II.

(*m*) That is, except in so far as it forms part of the statute law. *But see* COMMON LAW.

tained by argument founded on legal principles and authorities what the law is on the particular point (*n*).

In determining questions of ecclesiastical law great weight is to be given to ancient writers whose treatises have been accepted by the judges of the Ecclesiastical Courts as of authority. But not to John de Burgh and similar writers whose expressions are intended to apply wholly to the Roman Catholic Church (*o*). Some weight is to be given to foreign jurists and great weight to the practice of the Courts Ecclesiastical, but most weight of all is to be given to judicial decisions (*p*). Great importance is also attached to ancient and continuous post-Reformation custom and practice (*q*). (*See* CANON LAW.)

ENGLAND, Church of, is the Christian religious body which, in England and Wales, maintains, under the Royal Supremacy, the Protestant Reformed Religion established by law. The term "English Church," or *Ecclesia Anglicana*, was, in Roman Catholic times, used to designate the clergy, *i.e.*, the clergy of the Roman obedience in England (*r*). The existence of the "Church of England" dates from the final separation from Rome (*s*). It was certainly in existence in 1548 as a Protestant Church, and its identity from that time to the present cannot be questioned, whatever changes may have since been made in its discipline by the united action of Parliament and Convocation (*t*).

The doctrinal differences between the Churches of Rome and England are *essential* (*u*) in their character, some autho-

(*n*) *Mackonochie* v. *Lord Penzance* (1881), 6 App. C. 424, *per* Lord Blackburn at p. 446.

(*o*) *Parker* v. *Leach* (1866), 4 Moore, N. S. 180, 199.

(*p*) See judgment of Lord Blackburn, L. R. 6 App. C. 446.

(*q*) *Ridsdale* v. *Clifton* (1877), 2 P. D. 331; *Re Robinson*, [1897] 1 Ch. 85; *Exeter* v *Marshall* (1868), 3 H. L. 17.

(*r*) Preamble, 24 Hen. 8, c. 12; Magna Charta, A.D. 1215 to 1297; 25 Ed. 3, st. 4. It is believed that the term is never used in the post-Reformation sense. As to the "Church of France," see the Pope's letter in daily papers, Nov. 16, 1891.

(*s*) *Baker* v *Lee* (1860), 8 H. of L. Cas. 517, *per* Lord Wensleydale.

(*t*) *Ibid.* p. 504, *per* the L. C.

(*u*) *Liddell* v. *Westerton* (1857), Moore, Sp. Rep. 176, *per* P. C.

rities say *fundamental* (*x*). Speaking generally one would say that the identity of a religious community described as a church must consist in the unity of its doctrines (*y*); and articles, creeds, confessions, formularies and tests are used to ensure this unity. If a person agrees he affixes his signature to such articles, or in some way notifies his recognition of their truth, if he disagrees he withholds his signature or declaration. In the former case we say that he is, and in the latter case that he is not of our religion (*z*). When a Church changes its doctrine in essential matters, it cannot retain its property except by virtue of an Act of Parliament (*a*). The Church of England bishops and clergy, therefore, hold their property by favour of Parliament, and subject to their assent to the Protestant Thirty-nine Articles of Religion imposed by the State, and without which assent no benefice in the Church of England can be held. For when men subscribe money for a particular object and leave it behind them for the promotion of that object, their successors have no right to change the object endowed. This can only be done by Act of Parliament (*b*).

(*x*) See Makower, C. Hist. C. of E. Many ecclesiastics maintain that the Reformation was a mere incident, not affecting the Roman Church as it then existed, to any appreciable extent; that the Church remained the "same Church as she had been before as much as a face that is washed is the same that it was before when it was dirty" (Archdeacon Sharp's Works, vol. vii. p. 234). Others maintain that practically all Roman doctrine can be taught in the Church of England (Tract for the Times, 90; see *Hodgson* v. *Oakeley* (1845), 1 Robertson, 322). By similar reasoning Episcopalians must admit similar remarks would apply to the Church of Scotland, which has adopted Presbyterianism, *i.e.*, that it is the same Church as the pre-Reformation one. It all depends upon what is meant by the word "Church." That Parliament continued, with certain statutory alterations, the territorial divisions, for example, of the Roman Catholic Church, is clear, but there are obvious legal, historical, and doctrinal difficulties in the way of asserting absolute continuity. There is also no historical foundation for the statement that the pre-Reformation Church was an "autonomous Church of England." Maitland, Roman Canon Law in Church of England; Wright & Neil, Protestant Dict., arts. on Canon Law.

(*y*) *General Assembly, &c.* v. *Lord Overtoun*, [1904] A. C. at p. 612.

(*z*) *Ibid.* p. 616.

(*a*) *General Assembly, &c.* v. *Lord Overtoun*, [1904] A. C. 515; and 5 Edw. 7, c. 12. *See* SCOTLAND, CHURCH OF.

(*b*) *Ibid.*, [1904] A. C. at p. 626. The history of the Christian societies in Britain cannot be gone into here, but it may be useful to mention that *Christianity* was founded by Greek

Parties. The Reformation of the Church of England was in fact a State compromise, and consequently, within definite limits, diverse opinions on matters of doctrine are held by its members, though all (except a few dissentients) are bound together by a common form of service and a common ritual. The three great divisions are known as High, Low, and Broad Church, and, as a very rough description, they may be said to represent Romanism, Protestantism, and Rationalism —formality, spirituality, morality—respectively. They have been termed the body, spirit, and soul of the Church. These parties have no separate legal status.

Statistics. The number of adherents of the Church in England cannot be accurately determined as no religious census is taken. They have been estimated at about one-half of the population, but this estimate, no doubt, comprises a large number of merely nominal members. (*See* CHURCH; CLERGY; ESTABLISHMENT.)

EPISCOPACY. (*See* APOSTOLIC SUCCESSION; BISHOP.)

ESTABLISHMENT simply means the privileges and disabilities which a Church or religion has by reason of its connection with the State. If "disestablished" it becomes a mere voluntary association, and gains its freedom at the expense of its exceptional privileges. Opinions, among the friends of the Church, are much divided as to the advisability of this. If disestablished and disendowed, it would probably soon be placed in a better position than before by means of the voluntary subscriptions of the faithful. The incomes of the clergy would be more equally and justly distributed, and the junior clergy would be rescued from their present unsatisfactory position. On the other hand, the probability is that the Church will break up into at least two sects as soon as the strong controlling hand of the State is removed.

missionaries in apostolic or sub-apostolic times, and has had a continuous existence, in parts of the island, ever since.

There is also a strong feeling among Englishmen that, although the utmost liberty of conscience is desirable, some form of the Protestant faith, for which our fathers suffered, ought to be recognized as the Church of the English people.

EXAMINATION. The bishops are to be very careful and diligent in examining candidates for Ordination (*c*), and most of them keep an examining chaplain. The "Preliminary Examination for Holy Orders" is, however, accepted by most bishops as sufficient for a deacon candidate. This examination involves a knowledge of Greek and Latin, Scripture and Church History, the Bible, Prayer Book, and the Creeds and Articles. Opportunity is also given for showing a knowledge of Hebrew. All bishops hold a separate examination for priests' orders (*d*). No curate or minister may be permitted to serve in any place without "examination and admission" of the bishop of the diocese. This in the case of a modern "curacy" simply means that the bishop is to "investigate and see" whether a licence should be granted (*e*).

EXCHANGE. An incumbent may exchange his benefice for any other spiritual benefice, but not for a lay preferment, as a hospital. The consents of the bishops and the patrons are necessary; and to be effectual the exchange must be actually completed, *i.e.*, each party must be fully instituted and inducted in the other's benefice (*f*). But as each incumbent, as an initial step, has to place an unconditional resignation (*q. v.*) in the hands of the bishop, an exchange is attended with a very considerable and unnecessary amount of risk (*g*). The parties resigning should, therefore, always obtain an extrinsic acknowledgment from the bishop that the resignation is made merely for the purpose of an exchange.

(*c*) Cans. 34 and 35.
(*d*) For particulars, see the Diocesan Calendars.
(*e*) Can. 48. *Rex* v. *Bp. of Liverpool* (1904), 20 T. L. R. 485.
(*f*) Burn.
(*g*) See *Rumsey* v. *Nicholl* (1877), 2 C. P. D. p. 299.

Then, if the exchange falls through, the resignation would, in the opinion of Lord Chief Justice Cockburn, become null and void (*h*).

No money or money's worth may be given for equality of exchange. (*See* SIMONY.)

EXCOMMUNICATION is of two kinds, the less and the greater. The less is an ecclesiastical censure excluding the party from the participation of the sacraments; the greater proceeds farther, and purports to exclude him, not only from these, but also from the company of all Christians (*i*). Formerly excommunication involved imprisonment and loss of civil rights as well as ecclesiastical punishment, and was very similar to outlawry, but since 1813 no excommunicated person incurs any civil penalty or incapacity whatever, save such imprisonment, not exceeding six months, as the Court shall direct (*k*). This penalty, however, could not now be enforced on a layman. At the same time excommunication *for contempt* was in effect abolished and the writ *de contumace capiendo* (*q. v.*) substituted (*l*). But the power of excommunication (*i.e.*, exclusion from the Church of England) is still reserved to the Ecclesiastical Courts as the form of spiritual censure (*m*); and by the canons *clergymen* who deny the Royal Supremacy in the Church, or who impugn the Prayer Book, Thirty-nine Articles, or the Church Government, or who are authors of schism, are to be excommunicated *ipso facto* (*n*), while those who maintain that schism is lawful, or who persist in neglecting to catechise, are to be excommunicated, but not *ipso facto* (*o*). The greater excommunication is here meant, and when *ipso facto* it would seem that it ought to take place on proper proof without sentence being pronounced (*p*). Some

(*h*) *Rumsey* v. *Nicholl* (1877), 2 C. P. D. p. 297.
(*i*) 3 Bla. Com. 101, and Art. 33.
(*k*) 53 Geo. 3, c. 127, ss. 2 and 3.
(*l*) *Ibid.* s. 1.
(*m*) *Ibid.* s. 2; and see Art. 33.
(*n*) Cans. 2—9 and 12.
(*o*) Cans. 10, 11 and 59.
(*p*) Compare DEPRIVATION *ipso facto*; and see Burn. In the Arches Courts a *sententia declaratoria* is pronounced.

authorities, however, consider that the words *ipso facto* here simply mean that no other sentence can be pronounced. A lesser excommunication is also decreed for the like offences by Canon 27.

As to the excommunication of the laity for "notorious and evil living," *see* LORD'S SUPPER.

FACULTY is a licence from the Bishop's Court to make alterations in the church or churchyard or for the exclusive use of a pew. The jurisdiction to grant or withhold faculties is vested in the chancellor of the diocese (*q*), and there is an appeal from his decision; but the Privy Council interferes only with great reluctance with the exercise of the local ordinary's discretion in these matters (*r*). It is not an ordinary licence, but a judicial decree, and the principles which govern other judicial proceedings are applicable (*s*). A faculty should always be obtained for any alteration of importance, and theoretically one is required for every alteration, however trivial. It would seem, however, that this rule does not apply to the moving of articles movable in their nature, *e.g.*, Communion table, candlesticks, flower vases, &c. (*t*). Before a faculty, either to the parishioners in general or to a private inhabitant of the parish, can be decreed, the ecclesiastical law requires that all persons interested in opposing the grant should have an opportunity of being heard before the ordinary, and a vicar has a *persona standi*, by reason of his general spiritual position as incumbent, to oppose the grant of a faculty, although he may have no pecuniary interest in it (*u*). It is the rule that the wishes

(*q*) *White* v. *Bowron* (1873), L. R. 4 A. & E. at p. 211; *Nickalls* v. *Briscoe*, [1892] P. 269.

(*r*) *Rugg* v. *Kingsmill* (1868), L. R. 2 P. C. 64, 65.

(*s*) *Per* Sir Lewis Dibdin, Dean of Arches, in *L. C. C.* v. *Dundas*, [1904] P. at p. 32.

(*t*) In *Simmons* v. *Middleton* (1898), *Times*, and *Eastern Morning Press*, Aug. 31, 1898, Chancellor Blofeld held that a cross, candlesticks, and flower vases could not be moved from a retable to another part of the church without a faculty. As to Communion table, *see* LORD'S TABLE.

(*u*) *Rugg* v. *Kingsmill*, *ubi sup.*; and see *Hansard* v. *Parishioners*, *&c.* (1878), 4 P. D. 54.

of the parishioners generally are to predominate as to external alterations, but those of the parishioners who are members of the Church of England as to internal alterations (*x*); but this in no way fetters the judge's discretion (*y*).

The consecration or dedication of a new church does not amount to a faculty. It gives no episcopal sanction for the retention of ornaments or decorations in the church at the time (*z*).

If an alteration has been completed without a faculty the proper course is for the party aggrieved to apply to the Ecclesiastical Court; but before it is completed it would seem that he may apply to the Chancery Division for an injunction to maintain the *status quo* until such time as the matter can be determined in the Ecclesiastical Court, the latter Court having no practice of interfering by injunction to prevent a thing being done (*a*). But in no case may the party aggrieved take the law into his own hands and remove the article complained of (*b*). It is also improper to apply to the High Court for an injunction to restrain action under a faculty not yet granted (*c*). A confirmatory faculty is often granted confirming changes made without a faculty, at the cost of the person improperly making the change (*d*).

A faculty is not necessary in order to obey a monition under the Public Worship Regulation Act; but if the judge directs a faculty to be applied for, only the fees prescribed under the Act are payable (*e*).

A faculty, if improperly obtained, may be revoked (*f*).

(*x*) *Tottenham* v. *Venn* (1874), L. R. 4 A. & E. 221; *Peek* v. *Trower* (1881), 7 P. D. 21; *St. Botolph*, [1900] P. 69; *Markham* v. *Shirebrook*, [1906] P. 239.

(*y*) *Nickalls* v. *Briscoe*, [1892] P. 269.

(*z*) *Markham* v. *Shirebrook*, *ubi sup.*; *Davey* v. *Hinde*, [1901] P. 95.

(*a*) *Marriott* v. *Tarpley* (1838), 9 Sim. 288; *Batten* v. *Gedye* (1889), 41 Ch. D. 507, 516.

(*b*) *Ritchings* v. *Cordingley* (1868), L. R. 3 A. & E. 113.

(*c*) *Prond* v. *Price*, C. A., [1893] 9 R. 43; 42 W. R. 102.

(*d*) See *St. Andrew's, Haverstock Hill* (1909), 25 T. L. R. 408.

(*e*) 37 & 38 Vict. c. 85, s. 14.

(*f*) *Butt* v. *Jones* (1829), 2 Hagg. 417.

As to the presumption of a grant of a faculty, *see* PEWS. The word faculty is also used as an equivalent for Dispensation (*q. v.*), or Licence (*q. v.*).

Fees. The fees payable to diocesan officers on a faculty amount to 5*l.* 5*s.* (for particulars, *see* FEES), except under the Public Worship Regulation Act, when the fee is only 2*l.* 2*s.*

Faculties or licences authorizing any matter relating to a consecrated building or ground, or anything to be set up or altered therein or removed therefrom, are exempt from stamp duty (*q. v.*). Other faculties, as a rule, must bear a 10*s.* or 2*l.* stamp (*g*).

FASTING and FAST-DAYS. Fasting is total (not partial) abstention from food and pleasure for a certain period. There are no definite directions for fasting given by our Church, but the Homily of Good Works and Fasting lays down the general rule that we should "endeavour ourselves, both inwardly in our hearts and also outwardly with our bodies, diligently to exercise this godly exercise of fasting in such sort and manner as the holy prophets, the apostles, and divers other devout persons for their time used the same."

Fasts are either private (of an individual) or public (as of a city or the whole country). A long list of the days recommended by the Church for private fasting will be found in the Prayer Book just after the Calendar. Lent has always been considered an appropriate period, and Fridays and Saturdays the most suitable days (*h*). Days of public fasting and humiliation are fixed by royal proclamation as occasion requires.

FEES (*i*). As a general rule, no rite of the Church should

(*g*) 54 & 55 Vict. c. 39. *And see* LICENCE.

(*h*) See 5 & 6 Edw. 6, c. 3, s. 4.

(*i*) Various notes as to fees and stamp duties will be found scattered throughout the book. *See* PROCURATIONS; MARRIAGES; BURIALS, &c.

be withheld because the fee is not paid (*k*). The clergyman can take steps afterwards to recover his fees.

Customary fees, called surplice fees (*q. v.*), are payable on marriages and burials, but none now on baptisms.

It seems that where the offices of sexton and deputy clerk are unnecessary and in abeyance, the fees customarily payable to them may be assigned to the incumbent (*l*).

A table of fees must be exhibited in every Consistory Court and Diocesan Registry (*m*).

Statutory tables of fees settled by the Archbishop of Canterbury, the Lord Chancellor, and the Archbishop of York, in pursuance of the Pluralities Act, 1838, and the Ecclesiastical Fees Act, 1867, are sanctioned by the Privy Council from time to time and duly published in the *London Gazette* (*n*).

TABLE OF FEES.

—	—	Vicar-General or Chancellor.	Registrar or other Officer by usage performing the Duty.	Secretary of Archbishop or Bishop.	Commissary of Dean and Chapter.	Registrar of Dean and Chapter or other Officer by usage performing the Duty.	TOTAL.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1	Ordination	...	0 5 0	2 2 0	...	...	2 7 0
2	Presentation to a Benefice if prepared by the Bishop's Secretary.	...	...	2 2 0	...	...	2 2 0
3	Presentation to a Benefice in Gift of Dean and Chapter if prepared by Registrar.	...	...	...	...	2 2 0	2 2 0
4	Nomination to a Perpetual Curacy if prepared by the Bishop's Secretary.	...	...	1 1 0	...	...	1 1 0
5	Nomination to a Perpetual Curacy in Gift of Dean and Chapter if prepared by Registrar.	...	...	...	...	1 1 0	1 1 0
6	Commission for Institution when issued.	...	...	1 1 0	...	...	1 1 0

(*k*) See Lynd. 278.

(*l*) *In re St. George's*, Lond. Consistory, Aug. 9, 1877, cited in Urlin's Legal Guide for the Clergy.

(*m*) Can. 136.

(*n*) 1 & 2 Vict. c. 106; 30 & 31 Vict. c. 135. The latest Table of Fees was sanctioned by the Privy Council 6th Oct. 1908, and is set out above. See *London Gazette*, 1908, p. 7303; Statutory Rules and Orders, 1908, p. 315.

—	—	Vicar-General or Chancellor.	Registrar or other Officer by usage performing the Duty.	Secretary of Archbishop or Bishop.	Commissary of Dean and Chapter.	Registrar of Dean and Chapter or other Officer by usage performing the Duty.	TOTAL.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
7	Commission for Licence to Perpetual Curacy when issued.	...	...	1 1 0	...	...	1 1 0
	Collation	*Vide Scale. Post.*					
	Institution						
	Induction						
	Licence to Perpetual Curacy.						
8	Dispensation to hold two Benefices.	...	...	1 1 0	...	...	4 15 6
	Archbishop's Secretary for Fiat.						
9	Bishop's Secretary for obtaining certificate of value, population, &c., and passing the Dispensation through the Offices, including the fees (£1 12*s.* 6*d.*) to the Faculty Office.	...	...	3 14 6			
10	Collation to Minor Canonry ...	...	...	...	0 10 6	2 2 0	2 12 6
11	Collation to an Honorary Prebend or Canonry.	0 16 8	1 1 0	2 2 0	...	...	3 19 8
12	Induction to Honorary Prebend or Canonry.	...	...	...	...	1 1 0	1 1 0
13	Collation to a Canonry (not honorary).	0 16 8	2 2 4	4 4 0	...	...	7 3 0
14	Installation to a Canonry or Archdeaconry.	...	...	...	1 1 0	4 4 0	5 5 0
15	Installation to a Deanery ...	...	...	...	1 1 0	8 8 0	9 9 0
16	Consecration of a Church and Burial Ground or a Church without a Burial Ground.	3 3 0	7 7 0	1 1 0	...	...	11 11 0
17	Consecration of a Cemetery or Burial Ground.	2 2 0	6 6 0	1 1 0	...	...	9 9 0
18	Faculty (if unopposed) for minor alterations to be enumerated by the Chancellor of the Diocese or for the removal of Glebe buildings.	1 1 0	1 1 0	...	...	...	2 2 0
19	Faculty for other alterations in Churches and Churchyards.	1 1 0	3 13 6	...	...	...	4 14 6
20	Episcopal Visitation	0 2 0	0 12 6	...	...	...	0 14 6
		Archdeacon or Official.					
21	Archidiaconal Visitation ...	0 2 0	0 12 6	...	...	...	0 14 6
22	Resignation, Instrument of, when prepared by Secretary.	...	...	1 1 0	...	...	1 1 0
23	Resignation under Incumbents Resignation Acts (payable in moieties by the outgoing and incoming Incumbents).	...	0 5 0	£2 per cent. upon the annual value (as defined by the Incumbents Resignation Act, 1887) of the Benefice with a minimum of £3 and a maximum of £10.	...	...	...

In the following scale "Annual Value" means the net annual value of the benefice as defined by the Pluralities Acts (1 & 2 Vict. c. 106 and 13 & 14 Vict. c. 98) and will in case of difference be certified by the Ecclesiastical Commissioners for England, or as defined by the Incumbents Resignation Act, 1871 (*see* rule 2 of this Order). "Chancellor" includes vicar-general. "Bishop's Registrar" means the registrar or other officer by usage performing the duty. "Secretary" means secretary of archbishop or bishop.

SCALE.

In Respect of Collation and Induction or Institution and Induction to Benefices.

	£ s. d.	£ s. d.
Annual Value not exceeding 200*l.* :—		
Chancellor	0 10 0	
Archdeacon's Registrar	0 10 0	
Bishop's Registrar	0 15 0	
Secretary	1 5 0	
		3 0 0
Annual Value exceeding 200*l. but not exceeding* 300*l.* :—		
Chancellor	0 10 0	
Archdeacon's Registrar	0 10 0	
Bishop's Registrar	1 0 0	
Secretary	2 0 0	
		4 0 0
Annual Value exceeding 300*l. but not exceeding* 400*l.* :—		
Chancellor	0 10 0	
Archdeacon's Registrar	0 10 0	
Bishop's Registrar	1 5 0	
Secretary	2 15 0	
		5 0 0
Annual Value exceeding 400*l. but not exceeding* 500*l.* :—		
Chancellor	0 10 0	
Archdeacon's Registrar	0 10 0	
Bishop's Registrar	1 10 0	
Secretary	3 10 0	
		6 0 0

SCALE—*continued.*

	£	s.	d.	£	s.	d.
Annual Value exceeding 500*l.* :—						
Chancellor	0	10	0			
Archdeacon's Registrar	0	10	0			
Bishop's Registrar	2	5	0			
Secretary	4	15	0			
				8	0	0

In respect of Licences to Perpetual Curacies.

Annual Value not exceeding 300*l.* :—						
Chancellor	0	5	0			
Bishop's Registrar	0	15	0			
Secretary	1	0	0			
				2	0	0
Annual Value exceeding 300*l. but not exceeding* 400*l.* :—						
Chancellor	0	5	0			
Bishop's Registrar	1	5	0			
Secretary	1	10	0			
				3	0	0
Annual Value exceeding 400*l.* :—						
Chancellor	0	5	0			
Bishop's Registrar	1	15	0			
Secretary	2	0	0			
				4	0	0

Apparitor's Fees on Consecrations, Faculties, and Visitations.

	——	Apparitor.	Sealer.	Record Keeper.
		£ s. d.	£ s. d.	£ s. d.
1	Consecration of a Church and burial ground, or a Church without a burial ground.	1 1 0	—	—
2	Consecration of a cemetery or burial ground.	1 1 0	—	—
3	Faculty for alterations in Churches and Churchyards other than minor alterations.	0 10 6	—	—
4	Episcopal or Archidiaconal visitation.	0 3 6	—	—

Other Fees of Apparitor, Sealer, and Record Keeper.—The following fees may continue to be taken by any apparitor, sealer, or record keeper appointed before 10th

December, 1895. These fees are to be in addition to those hereinbefore prescribed; any application for them must be in writing and state the name and address of the applicant and the date of his appointment as apparitor, &c.

	——	Apparitor.			Sealer.			Record Keeper.		
		£	s.	d.	£	s.	d.	£	s.	d.
1	Collation to a Benefice	0	3	6	0	4	6	0	4	6
2	Institution to a Benefice.....	0	3	6	0	4	6	0	2	6
3	Induction to a Benefice consisting of one parish or of two or more united parishes.	0	1	0	0	2	6	0	1	0
4	Licence to a perpetual curacy		—		0	1	0	0	1	0
5	Collation to minor Canonry		—		0	2	6		—	
6	Collation to an honorary Prebend or Canonry.	0	3	6	0	4	6	0	4	6
7	Induction to honorary Prebend or Canonry.		—		0	2	6		—	
8	Collation to a Canonry (not honorary)	0	3	6	0	4	6	0	4	6
9	Installation to a Canonry or Archdeaconry.	0	10	0	0	5	0		—	
10	Installation to a Deanery	0	10	0	0	5	0		—	

RULES.

The fees include postages, telegrams, carriage and transmission of documents, office expenses, stationers' charges, and all other similar disbursements.

The registrar's fee on ordination is for registering the names and titles of the candidates in the register books of the diocese. The secretary's fee is for correspondence with the candidates, the drawing of papers, and instructions prior to examination, attendance at the ordination, preparing the letters of orders, and other necessary documents, and entering the names and titles of the candidates in the Bishop's Act Book.

The secretary's and registrar's fees for institution, collation, and licences to perpetual curacies, include all charges for correspondence with the clerk, searches, and usual inquiries, entries in the diocesan books, and for preparing the

mandate of induction and the return to the judges of the King's Bench.

The fee of the archdeacon's registrar on an induction is for transacting all matters and making the proper records.

The chancellor's fee on consecration of churches, burial grounds, or cemeteries, includes the approval of plans, the perusal of papers, the settling the sentence, and the approval of the draft act. The registrar's fee includes the perusal of the deeds of conveyance, the drawing and engrossing of the petition, and the sentence and the notarial act, the necessary attendance at the consecration, and the registering the deeds and the act in the register book of the diocese. The secretary's fee includes the inspection of plan and correspondence prior to the papers being sent to the registry. The apparitor's fee includes all necessary citations and attendance on the bishop at the consecration.

The chancellor's fee on faculties includes the perusal of the petition, the order for the notice or citation, as the case may be, the perusal of the certificate and other papers, and making the decree. The registrar's fee includes the perusal of the minutes of the vestry and the petition, the drawing of the notice or citation and other necessary documents and attending the chancellor for his order, the preparation of the certificate and attendance on the chancellor for his decree, and the drawing and signing the faculty.

The apparitor's fee includes the service of the notice or citation, but is exclusive of one shilling a mile for travelling expenses, if the citation is to be personally served in the country.

The chancellor's fee on a visitation includes the attendance of the chancellor or his surrogate, the examination of the presentments of the outgoing churchwardens, and the admission of the new churchwardens to office. The registrar's fee includes the drawing and issuing of the inhibition and of the mandate for the citation of the clergy, the preparation of the visitation books and of the articles of inquiry and the presentment papers, the attendance at the visitation, and

attesting the presentments and declarations of the churchwardens, the registering the papers exhibited by the clergy, the tabulating in the registry the copies of the register books of baptism and burials, and other papers required to be annually transmitted. The apparitor's fee includes the preparation and delivery of the citations to the clergy and churchwardens and the attendance at the visitation.

In addition to the above, it would seem that various other fees are charged, but it is not known under what authority unless by custom (*o*).

Solicitors in ecclesiastical cases are themselves responsible for the court fees (*p*).

The fees and stamp duty payable by a bishop on his appointment amount to about 400*l*. The following was published (*Standard*, October 12th, 1891) as being paid by the Bishop of Bangor:—

	£	*s.*	*d.*
Secretary of State	37	0	6
Crown Office	56	10	0
"Royal assent"	57	2	0
Restitution of Temporalities	71	12	6
Election, Confirmation, Consecration and Installation..	109	0	4
Licence of alibi	6	18	6
"Homage"	16	1	1
Cabs and Postages	2	2	0
Passing papers in Secy. office	21	0	0
Total	£377	6	11

The fees paid on a recent translation to London amounted to 414*l*. 1*s*. 8*d*. In the new sees the fees are much lower; thus the Bishop of Wakefield is said to have paid only 72*l*. 0*s*. 2*d*.

FIRST FRUITS. *Primatae*, or *annates*, the first year's *whole* profits of a spiritual preferment. They are, however, not payable on the present value of the living, but according

(*o*) For full particulars, see the Return as to Ecclesiastical Business Fees, 1891. Price 3*s*. 6*d*.

(*p*) [1903] P. 66.

to a valuation made in the sixteenth century, known as the "King's Books" (*q*). They arose out of the claim of the Pope of Rome to be the feudal lord of the Western Church, and were first introduced in the reign of King John. These papal usurpations (like tenths (*q. v.*)) were vigorously resisted by Parliament (*r*), but the English clergy foolishly insisted on satisfying them, either secretly or openly, and it is estimated that in fifty years 800,000 ducats had been sent to Rome for first fruits only; consequently, when Henry the Eighth became head of the Church, he somewhat humorously took it for granted that the clergy would be just as anxious to make the payments to the new head of the Church as to the old. They were thus annexed to the Crown (*s*), and were received by the sovereigns of England down to Queen Anne, who gave them up, and formed them into a trust called "Queen Anne's Bounty" (*q. v.*), for the benefit of the poorer clergy. The treasurer of Queen Anne's Bounty is now the collector, with power to enforce payments (*t*). The following preferments are exempt from payment of both first fruits and tenths—(1) livings under 50*l.* per annum (*u*); (2) dean and canons of Windsor (*x*); (3) certain hospitals, schools, and universities (*y*). No tenths are paid for the first year, as then first fruits are due (*z*). First fruits are paid three months after institution, tenths usually at Christmas (*a*). They are paid by the new incumbent as from the date of the avoidance, but if he lives but half a year he pays only a quarter of the first fruits; if one year, a half; if a year and a half, three-quarters; and if two years, the whole (*b*).

As to archbishops and bishops, first fruits and tenths have been commuted into an annual payment of 1*l.* 17*s.* 6*d.* per cent. (1*l.* for first fruits *and* 17*s.* 6*d.* for tenths) on the pre-

(*q*) See 1 Bla. Com. 285, by Kerr. A transcript is given in Ecton's Thesaurus and Bacon's Liber Regis.
(*r*) See 6 Hen. 4, c. 1.
(*s*) 1 Bla. Com. 285; 26 Hen. 8, c. 3; 1 Eliz. c. 4.
(*t*) 1 & 2 Vict. c. 20, s. 3.
(*u*) 6 Anne, c. 24, s. 2.
(*x*) 1 Eliz. c. 4, s. 8.
(*y*) *Ibid.* ss. 7—13.
(*z*) 27 Hen. 8, c. 8.
(*a*) Phill. E. L. 477.
(*b*) 1 Eliz. c. 4, s. 6. *And see* BENEFICE.

sent annual income of the see, *e.g.*, the Archbishop of Canterbury pays 281*l.* 5*s.* in respect of his income of 15,000*l.* a year, and the others less in proportion. All these sums are payable at such times and in such manner as tenths have usually been paid (*c*).

GLEBE. Lands of which the rector or vicar is seised *jure ecclesiae* (*d*). Glebe may be exchanged for other lands to become glebe by the Board of Agriculture under the Enclosure (*e*) or Tithe (*f*) Acts, with the consent of patron and ordinary, or by the incumbent, patron, and bishop (*g*). Glebe may be sold under the provisions of the Glebe Lands Act, 1888. The procedure is for the incumbent to give notice to the bishop and patron, and then apply in the manner prescribed by the rules under the Act to the Board of Agriculture for their approval. The incumbent is to have the like powers with respect to contracts as a tenant for life under the Settled Land Act, 1882, and may do all things necessary and proper for carrying the sale into effect (s. 8 (4)) (*h*). The purchase-money is to be paid to the Board (s. 4), to be invested in the name of the Ecclesiastical Commissioners. If invested in land it will become glebe land. Glebe land under the Act includes any manor land or tenement forming the endowment, or part of the endowment, of a benefice (s. 12); but the Act does not apply to (1) land occupied by the parsonage house, or the outbuildings, garden, or appurtenances thereof, or land which the Board may consider necessary for the convenient enjoyment of such house (s. 3). (2) Land subject to a lease originally created for a term of twenty-one years. (3) Land of which for any reason the incumbent is not in possession of the full rents and

(*c*) Ord. in C. of 27 Nov. 1852. Lond. Gaz. 1852, p. 3667.

(*d*) Termes de la ley. *See* INCUMBENT.

(*e*) 8 & 9 Vict. c. 118, and amending Acts.

(*f*) 5 & 6 Vict. c. 54, ss. 5—7; 9 & 10 Vict. c. 73, s. 22; 23 & 24 Vict. c. 93, s. 41.

(*g*) 55 Geo. 3, c. 147; 6 Geo. 4, c. 8; and see form of conveyance in Davidson's Conv. vol. 5, pt. 2, p. 89.

(*h*) *Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348.

profits; but mortgages and charges form no obstacle to the sale (ss. 6, 7). (4) Mines or minerals, if likely to become of considerable value.

There is a table of fees under this Act (*i*).

This Act does not repeal the previous Acts under which glebe may also be sold or leased (*k*). The owner of a rent-charge on the inheritance of the glebe under the Drainage Act of 1849 is entitled to a sale (*l*). The Board of Agriculture have also power to ascertain and define the boundaries of glebe (*m*). An incumbent may lease his glebe under the provisions of 13 Eliz. c. 10, or 5 & 6 Vict. c. 27 (*n*). The consent of the Ecclesiastical Commissioners is necessary for the opening and letting of mines in glebe lands (*o*).

On a sale of glebe under the Housing Act, 1909, and the Development and Road Improvement Funds Act, 1909, the purchase or compensation moneys must be paid to the Ecclesiastical Commissioners (*p*).

GREEK CHURCH, or the "Holy Orthodox Church," is the mother Church of all Christian communities. It is beyond doubt the aged tree beneath whose shade the rest of Christendom has sprung up (*q*).

For some considerable part of the first three centuries the Church of Rome and most, if not all, the Churches of the West were Greek religious colonies. Their language was Greek, their organization Greek, their writers Greek, their Scriptures Greek, and many vestiges and traditions show that their ritual and their liturgy were Greek (Milman, Lat. Chris. 1, 32). It may be added that nearly all *our* ecclesias-

(*i*) Parliamentary Paper, 1889, 101. Price ½*d*. Stat. R. and O. 1892, 11.

(*k*) 2 & 3 Vict. c. 49; 5 & 6 Vict. c. 54; 51 & 52 Vict. c. 20, s. 11. *See* INCUMBENT.

(*l*) *Scottish Widows' Fund* v. *Craig* (1882), 20 Ch. D. 208; *Northern Assurance Co.* v. *Harrison* (1889); and see *Ex parte Rector of Kirksmeaton* (1882), 20 Ch. D. 203.

(*m*) 5 & 6 Vict. c. 54, s. 5.

(*n*) *See* LEASES. As to glebe in Ireland, see 38 & 39 Vict. cc. 11, 42; and in Scotland, H. L. (Sc.) 1891, W. N. 122.

(*o*) *Eccl. Commrs.* v. *Wodehouse*, [1895] 1 Ch. 552; 5 & 6 Vict. c. 108.

(*p*) 9 Edw. 7, cc. 44, 47, sched.

(*q*) Dean Stanley, Eastern Church, p. 56.

tical terms are Greek. Therefore, the claim of Rome that Latin is the peculiar language of Christianity falls to the ground. The principal centres of the Greek Church were originally Jerusalem, Antioch, Rome, and Alexandria. In the 4th century Constantinople was added, and in the 16th Kieff in Russia. In the 11th century Rome, which had long endeavoured to arrogate to itself the primacy, and had long since adopted the Latin language in lieu of the Greek, thereby weakening its bond of union with the East, seceded, carrying with it the British and all other Churches in the West. Subsequently Moscow was erected into a patriarchate, to take the place of recreant Rome. The office of Patriarch of Moscow has, however, with the consent of the other patriarchs, been administered since 1720 by the Holy Synod, which is presided over by the Czar, and comprises metropolitans, bishops, and several lay members. The Greek Church is still divided into the five Patriarchates of Jerusalem, Antioch, Alexandria, Constantinople, and Moscow, of which the Patriarch of Constantinople has a nominal primacy. Various national Churches besides the Russian exist, *e.g.*, the Servian, Roumanian, Hellenic, Montenegrin, Bulgarian, which yet are one in doctrine with the Orthodox Greek Church.

The Greek Church still holds that the Holy Spirit proceeds from the Father only. It allows priests to marry. It teaches the doctrine of transubstantiation, but considers that communion ought to be in both kinds. It has excommunicated the Church of Rome, and, of course, denies its supremacy, which it considers the chief heresy of modern times. It holds very strongly to apostolic succession (*q. v.*). Its rule of faith is the Bible and tradition. The interpretation of the Bible belongs to the Church, but every believer may read the Scriptures. There is no other object of worship besides the Triune God, but homage may be paid to the Virgin Mary and reverence to the saints. The Church of Christ is the fellowship of all those who accept and profess all the articles of faith transmitted by the apostles and approved by the first General Synods. The ritual is very elaborate.

The Greeks have churches in London and several large towns.

The Churches of Jerusalem, Alexandria and Antioch have erred not only in their living and manner of ceremonies, but also in matters of Faith (*r*).

HERESY consists not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. The ancient Church defined accurately in what heresy consisted, but in the West, in mediæval times, it was any deviation from the faith as taught by the Pope of Rome (*s*), and about eighty-eight different kinds of heresy were reckoned up by the canon law (*t*). Heresy was punished by burning in those days (*u*), and the fires which were kindled in the reign of the Papist Queen Mary are not likely ever to be forgotten. By 1 Eliz. c. 1, all former statutes on the subject of heresy were repealed, leaving the jurisdiction as it stood at common law; that is, it left the simple offence to be visited by spiritual punishment in the Ecclesiastical Courts; and the offence, when aggravated by contumacy and relapse, to be dealt with by the writ *de heretico comburendo*. But in 1677 (*x*) this writ and the death penalty were abolished, and heresy became punishable only by ecclesiastical censures, *pro salute animæ*, a jurisdiction which is never now enforced on the laity. Heresy was defined by the above statute of Elizabeth to be such tenets as have been heretofore so declared by the words of the canonical Scriptures (*y*), the first four general councils, or such others as have only used the words of the Holy Scriptures, or which shall hereafter be so declared by Parliament with the assent of the clergy in Convocation. But this enactment has been repealed, and the question as to what is heretical in the English Church now turns upon the construction of the Church formularies,

(*r*) Art. 19.
(*s*) 4 Bla. Com. 44; and see Tertullian de Præscr. Hær. and 1 Hale, P. C. 383.
(*t*) 2 Burn, 304.
(*u*) See 2 Hen. 4, c. 15.
(*x*) 29 Car. 2, c. 9.
(*y*) See Art. 6.

and especially the Thirty-nine Articles (*q. v.*). (*See also* BLASPHEMY.)

HOLIDAY, or HOLY-DAY, a feast, festival, or red letter day in the calendar. They were formerly very numerous, and a considerable number are still left; a list of them will be found in the Prayer Book just after the calendar. Some are fixed; others, which depend on Easter Day (*q. v.*), are moveable. Only a few of these feasts are recognized as "holidays" in the ordinary sense of the word (*z*); and, on the other hand, the first Monday in August (which is not a great festival of the Church) is now kept as a holiday under the provisions of the Bank Holidays Act, 1871 (*a*). Days of thanksgiving may also be specially appointed by royal proclamation. There must be services in church on holy-days; but probably not on their eves, though this is directed by the canon (*b*).

HOMILIES. The Homilies, or Sermons, are in two books. The first, published soon after the accession of Edward VI., contains twelve sermons, written chiefly by Archbishop Cranmer. The second was chiefly by Bishop Jewel, and was not published till the reign of Elizabeth. They are declared by statute to contain a godly and wholesome doctrine, and directed to be read in churches (*c*). The doctrines (but not, it would seem, the opinions) contained therein form even now a standard of orthodoxy (*d*). Apart from this, they contain a great deal of information as to the customs and doctrines of the primitive Church. By the canon every church must be furnished with a copy of both books (*e*).

(*z*) See Judicature Act, 1875, Ord. LXI. r. 4.

(*a*) 34 & 35 Vict. c. 17; 38 & 39 Vict. c. 13; 39 & 40 Vict. c. 36.

(*b*) Can. 14. *But see* CLERGY, Duties; and PUBLIC WORSHIP.

(*c*) Art. 35; and see Cans. 46 and 49.

(*d*) *Fendall* v. *Wilson* (1862), 6 L. T. 727; *Philpotts* v. *Boyd* (1875), L. R. 6 P. C. 464. *And see* IMAGES.

(*e*) Can. 80. For the most recent learning on the subject, see Tomlinson on Prayer Book.

HOOD, a garment, originally intended only for outdoor wear. It is a kind of cape which hangs down the back and may be drawn forward over the head. It may be worn either attached to or separated from a cloak. In the Middle Ages it was worn by monks, and as a vestment by cathedral clergy under the name of *amice* or *almutium*. The hood is now chiefly known as the distinctive ornament of graduates in the Universities. By the canon such ministers as are graduates must wear their University hoods upon their surplices. A minister (being no graduate) may not wear a hood under pain of suspension; but, notwithstanding, he may wear instead of a hood "some decent tippet of black, so it be not silk" (*f*).

The degrees usually held by the clergy are the B.A. (Bachelor of Arts), and M.A. (Master of Arts). The B.A. hood is usually black trimmed with white fur, except that of London, which has an edging of brown silk, with the addition of a lining of white silk for members of Convocation. The M.A. hood is of black silk with a coloured lining, which at Oxford, St. Andrew's, and Glasgow is *red;* Cambridge, Aberdeen, and Edinburgh, *white;* London, *russet brown;* Dublin, *dark blue;* Durham, *purple*. The Doctor's hood in the English and Irish Universities is (with very few exceptions) of scarlet cloth with a coloured silk lining (*g*).

The "tippets" now worn by non-graduate clergymen, who have been members of theological colleges, are really "hoods," and have usually a coloured edging. This seems to be an infringement of the canon, unless the hoods represent "Lambeth degrees" (*q. v.*). (*See* TIPPET.)

IMAGES were not allowed among the primitive Christians. All held that representations of God, even of the Second Person as man, were unlawful (*h*). Statues are still forbidden in the Greek Church, though pictures are per-

(*f*) Can. 58.

(*g*) For very full list of degrees and hoods, see Whitaker's Almanack for 1904, pp. 717—719.

(*h*) Smith, Dict. of Chr. Ant., citing Clemens, Origen, &c.

mitted. Images (both statues and pictures) were greatly used and abused in the English Church during the Papal period, but at the Reformation not only the worshipping and adoration of images, but their mere presence in our churches, was strictly forbidden. The Homily against peril of Idolatry, which is still a statutory standard of orthodoxy, inveighs at great length against images, and declares that "by God's word and the sentences of the ancient doctors and judgment of the primitive Church all images, as well ours as the idols of the Gentiles, be forbidden and unlawful, namely, in churches and temples." The statute law ordered them all to be destroyed, except such as were monumental representations of a king, prince, nobleman, or other dead person which hath not been commonly reputed and taken for a saint (*i*); and the Act is still unrepealed. However, a change seems to have gradually come about, as the general rule of law, as laid down by the Privy Council, now is, that images are lawful if set up for the purposes of decoration only, and where there is no likelihood or danger of superstitious reverence. The grounds of this decision were that the efficacy of the Act of Edward was "spent" upon the particular images then existing, and that it does not refer to the subsequent use or abuse of images; that the statements in the Homily are not statements of "doctrine" but of "opinion," and therefore not binding; that the doctrine laid down by it is the same as that of the 22nd Article, which their lordships say condemns only the abuse and not the use of images (*k*). Whether an image is lawful or not, therefore, depends on the facts of each particular case. The Privy Council have, however, affirmed the general illegality of an isolated crucifix (*q. v.*). The Exeter reredos was held lawful, although it contained many sculptured images in high relief, representing the Ascension, the Transfiguration, and the Descent of the Holy Ghost on the day of Pentecost.

(*i*) 3 & 4 Edw. 6, c. 10, ss. 2 and 6.
(*k*) *Philpotts* v. *Boyd* (1875), L. R. 6 P. C. 464; approved in *Ridsdale* v. *Clifton* (1877), 2 P. D. 276, 351.

Following this as a precedent, the Bishop of London decided (and a bishop's decision in these matters is now apparently final (*l*)) not to permit a trial in the case of the St. Paul's reredos, which contains a figure 5 ft. in height of our Lord upon the Cross, in a conspicuous position immediately over the Communion Table, so as to have the appearance of an altar crucifix, and a figure 5 ft. 6 in. in height of the Virgin with the Child in her arms in a conspicuous position above the figure of our Lord (*m*). In the case of a reredos in a parish church, it was held that there was danger of superstitious reverence being given to the central figure, which was a representation of our Lord seated as King, surrounded by the Virgin Mary and three saints, and the faculty was refused (*n*); while in another case, where the central panel of a reredos consisted of a sculptured representation of the Crucifixion in high relief, forming part of a group, Lord Penzance granted a faculty (*o*). As a general rule, an isolated sculptured figure is considered more likely to cause idolatry than an historical group (*p*).

Painted windows containing representations of our Lord, and generally illustrating Scripture subjects, are permitted, the offering of adoration to stained glass being practically unknown among Christians, and the risk of it inappreciable (*q*). The "stations of the Cross" are illegal (*r*).

Although the presence of images in a church may be lawful, their ceremonial use during Divine Service is quite illegal.

INCENSE. The ceremonial use of incense at a service in the Church of England is unlawful, and it is also unlawful

(*l*) *See* CHURCH DISCIPLINE ACT and PUBLIC WORSHIP REGULATION ACT.

(*m*) *Reg.* v. *Bishop of London* (1889), 24 Q. B. D. 213, in H. L., but not on the merits, 65 L. T. 92.

(*n*) *Re St. Lawrence* (1880), 5 P. D. 131; *St. John, Timberhill*, [1895] P. 71.

(*o*) *Hughes* v. *Edwards* (1877), 2 P. D. 361; and see *St. John, Pendlebury*, [1895] P. 178; *Barsham case*, [1896] P. 256; *Great Bardfield*, [1897] P. 185; *Christ Church, Ealing*, [1906] P. 289.

(*p*) See judgment of Chancellor P. V. Smith in *St. John, Pendlebury, ubi sup.*

(*q*) See judgment of Chancellor P. V Smith in *St. John, Pendlebury.*

(*r*) *Clifton* v. *Ridsdale* (1876), 1 P. D. 359; *St. Mark's*, [1898] P. 114.

to use it immediately before the celebration of the Holy Communion, so as to be preparatory or subsidiary to the celebration (*s*). There is no trace of the use of incense in Christian worship during the first four centuries. On the contrary, we meet with many statements in the writings of the early Fathers which cannot be reconciled with the existence of such a custom (*t*).

INCEST is an immoral relation between persons who cannot legally marry. In certain cases incest is now, under the Punishment of Incest Act, 1908, a civil offence (*u*), and in the remaining cases is an ecclesiastical offence. Marriage with a deceased wife's sister is legal, so the connection is not incestuous (*x*).

INCUMBENT is the holder and ruler of a benefice (*q. v.*); and the word has a meaning corresponding to benefice, but is generally taken to mean the spiritual parson, whether rector (*q. v.*), vicar (*q. v.*), or perpetual curate, the latter being now usually called vicar (*y*). The incumbent is a corporation sole. An incumbent will lose his preferment if convicted of treason or felony, unless a free pardon is granted by his Majesty within two months of the conviction or before the filling up of the benefice (*z*); by cession or taking another benefice (*a*); by consecration, unless as a colonial or suffragan bishop, for benefices cannot now be held *in commendam* (*b*); by deprivation (*q. v.*); by inhibition (*q. v.*) if it lasts for three years; and by resignation (*q. v.*).

The incumbent is usually the freeholder of the real property belonging to the benefice (*c*), but only as a kind of life

(*s*) *Sumner* v. *Wix* (1870), L. R. 3 A. & E. 58. Opinion of the Archbishops, July 31, 1899, printed by Macmillan.

(*t*) Smith, Dict. of Chr. Ant.

(*u*) 8 Edw. 7, c. 45; *King* v. *Ball*, [1911] A. C. 47. For the prohibited degrees under this Act see ss. 1 and 2.

(*x*) *See* MARRIAGE.

(*y*) 31 & 32 Vict. c. 117, s. 2.

(*z*) 33 & 34 Vict. c. 23, s. 2.

(*a*) *See* PLURALITIES.

(*b*) *See* BISHOP; COMMENDAM.

(*c*) *See* RECTOR and VICAR; and *Jones* v. *Ellis* (1828), 2 Y. & J. 265. Sometimes charges on land are created for the benefit of the incumbent for the time being. See *Robinson* v. *Smith* (1908), 24 T. L. R. 573.

tenant. His powers are therefore limited. He may cut timber for repairs, and commit other kinds of waste (*d*), and may grant leases and sell the glebe under certain conditions (*e*). He may also sell farm produce, and metals and minerals from mines lawfully worked by him (*f*), but as a general rule he has, by himself, no power of sale (*g*). He has, however, the same powers of sale, exchange, and enfranchisement as are possessed by any ecclesiastical corporation, sole or aggregate, under any Act in force in 1861 (*h*).

The incumbent is in all cases entitled to *possession* of the church, chancel, and churchyard for spiritual purposes.

Waste. The incumbent may not cut down trees except for reparations to the church, chancel, or rectory pew (where he is liable to repair them), or the parsonage, or barns and outhouses adjoining. If he cuts down trees for any other purpose, he is punishable in the Ecclesiastical Courts, and also by writ of prohibition, and may be restrained by injunction of the Chancery Division (*i*). He may, however, cut down timber, sell it, and purchase other timber of equal value to be immediately applied for repairs, but not to form a fund for future repairs (*k*). The patron is the proper person to apply for an injunction. By the custom of the country, underwood may be cut for any purpose, but to grub it up is waste. It is doubtful whether the parson can in any case be restrained from ploughing up ancient meadows. He cannot dig stones, &c., except for repairs, or open mines, but may work those already opened, if legally opened (*l*).

As to mortgage and borrowing. An incumbent cannot, for his own personal benefit, mortgage any of the emoluments of his benefice (*m*), not even pew rents (*n*), and in some cases

(*d*) *See* WASTE and CHURCHYARD.
(*e*) *See* LEASES and GLEBE.
(*f*) *See* CLERGY.
(*g*) See 13 Eliz. c. 10, s. 3.
(*h*) 24 & 25 Vict. c. 105, s. 3; 25 & 26 Vict. c. 52.
(*i*) 1 Cruise, 130, 131.
(*k*) *Sowerby* v. *Fryer* (1869), L. R. 8 Eq. 422.
(*l*) *Eccl. Commrs.* v. *Wodehouse*, [1895] 1 Ch. 552. *See* GLEBE.
(*m*) 13 Eliz. c. 20; Coote on Mortgages, p. 374.
(*n*) *Ex parte Arrowsmith* (1878), 8 Ch. D. 96.

not his pension (*o*). Where he pays off the land tax, he has a security on the living, if he exercises the option given by the statute (*p*). Though a charge is void, collateral securities, *e.g.*, covenants or bonds, are valid (*q*). But an incumbent may mortgage the living to raise money for building, repairing, or purchasing a house and other necessary buildings (*r*), or for purchasing contiguous land (not exceeding twelve acres), repairing the chancel (when the incumbent is liable), building, improving or purchasing any farmhouse, or labourers' dwellings upon or for the lands of the benefice (*s*). Not more than four years' net income, or less than 100*l*., or one year's income can be raised under these Acts: the principal is made repayable by thirty annual instalments, with interest, but in some cases the time has been extended (*t*). The advances are generally obtained from Queen Anne's Bounty (*q. v.*). The incumbent may advance his own money (*u*), but he must be careful to comply with the terms of the statute, and to use the forms of mortgage given. A mortgage may also be given to secure advances under the Dilapidations Act, 1871 (*x*), and payments for compensated tenants' improvements under the Agricultural Holdings Act, 1883, may be charged on the living (*y*). A judgment entered up against an incumbent does not create a charge on the living (*z*). The remedy is sequestration (*q. v.*).

Duties. In addition to his ordinary duties as a clergyman, an incumbent must repair and insure the property of the benefice (exclusive of the church, but inclusive of the chancel, in the case of a rector) (*a*). He must answer the

(*o*) *See* BANKRUPTCY.
(*p*) Coote, p. 375.
(*q*) *Ibid.* p. 376.
(*r*) The Gilbert Act, 17 Geo. 3, c. 53; 21 Geo. 3, c. 66; 1 & 2 Vict. c. 23; 1 & 2 Vict. c. 106, s. 62.
(*s*) 28 & 29 Vict. c. 69; 34 & 35 Vict. c. 43; 35 & 36 Vict. c. 96; 44 & 45 Vict. c. 25.
(*t*) 50 Vict. c. 8; 59 & 60 Vict. c. 13; and see *Ex parte Christchurch*, [1896] 1 Ch. 520.
(*u*) *Boyd* v. *Barker* (1859), 5 Jur. N. S. 234.
(*x*) *See* DILAPIDATIONS.
(*y*) *See* LEASES.
(*z*) *Hawkins* v. *Gathercole* (1855), 24 L. J. Ch. 332.
(*a*) *See* DILAPIDATIONS and INSURANCE.

questions annually put to him by the bishop within three weeks, and transmit the answers to the bishop (*b*). He usually has to appoint a churchwarden and the parish clerk, and to preside at vestry meetings. He is responsible for all that his curate or any other clergyman may do in his church with his sanction or permission (*c*), and nothing is more clear than that no Church minister can use his pulpit or officiate in his parish without his consent (*d*), except under certain Acts of Parliament. A resident incumbent, who keeps a curate, must himself read prayers and minister the sacraments at least once a month, under penalties for default, unless he has a lawful impediment allowed by the bishop (*e*). He has practically complete control over the organist, choristers, and bell-ringers.

INDIAN CHURCH. The Protestant Episcopal Church in the East Indies is partly established and endowed by the State, and partly voluntary. The Church of Scotland (Presbyterian) is in a similar (though humbler) position, and any other Church may be subsidized. In 1813 a bishopric was founded at Calcutta for the whole of the British territories in India. The bishop was (by statute) secured a salary of 5,000*l*. a year, and three archdeacons 2,000*l*. a year each, with pensions and other emoluments (*f*).

In 1836 and 1837 the bishoprics of Madras and Bombay were founded. By the Act of 1833 (*g*), the two new bishops had been given a salary of 24,000 sicca rupees a year, the Bishop of Calcutta was made metropolitan, and various regulations for the management of ecclesiastical affairs in India were laid down, with power to the Crown to supplement them by letters patent. The bishops are appointed by

(*b*) 1 & 2 Vict. c. 106, s. 52; and see Schedule and Dilapidations Act, 1871, s. 55.

(*c*) *Parnell* v. *Roughton* (1874), L. R. 6 P. C. 46.

(*d*) *Nesbitt* v. *Wallace*, [1901] P. 354; *St. Albans* v. *Fillingham*, [1906] P. 163.

(*e*) 13 & 14 Car. 2, c. 4, s. 7.

(*f*) 53 Geo. 3, c. 155, ss. 49 *et seq.*; 4 Geo. 4, c. 71.

(*g*) 3 & 4 Will. 4, c. 85, ss. 89 *et seq.*; 34 & 35 Vict. c. 62, s. 1.

his Majesty. Appeals lie from the metropolitan to the Archbishop of Canterbury and thence to the Sovereign.

The Secretary of State for India has now power on a vacancy to alter the salaries of the bishops, and to abolish their allowances (*h*).

In addition to this there are bishoprics founded by voluntary effort.

Two chaplains of the Church of Scotland are on the establishment of each presidency (*i*).

INDUCTION. After institution the bishop issues his mandate for induction directed to him who has the power to induct of common right. This person is generally the archdeacon of the diocese, though others by prescription or composition may induct. Induction is investing the clerk with full possession of all the profits belonging to the church, and constitutes public notice of the fact to everybody interested (*k*). The person who inducts usually takes the clerk by the hand and lays it upon the key or ring of the church door, or, if this cannot be done, then on any part of the wall of the church or churchyard, and says to this effect:—"By virtue of this mandate I do induct you into the real, actual, and corporal possession of this church of C., with all the rights, profits and appurtenances thereto belonging." After which the inductor opens the door and puts the person inducted into the church, who usually tolls the bell to make his induction public and known to the parishioners. After this the inductor endorses a certificate of induction on the mandate, which is witnessed by the persons present (*l*).

The next formality is reading in (*q. v.*).

INHIBITION, an order of an ecclesiastical judge forbidding a clergyman to exercise his office. It is a mode of

(*h*) 43 Vict. c. 3, s. 3.
(*i*) 3 & 4 Will. 4, c. 85, s. 102.
(*k*) *Keen* v. *Denny*, [1894] 3 Ch. 178. As to induction to separate property by the Diocesan Registrar, see *Re Bishop of Bath and Wells*, [1899] 2 Ch. 138. For fees, see Statutory Order, *London Gazette*, 1908, p. 7303, and FEES.
(*l*) Burn, Ecc. Law, i. 173.

punishing disobedience to a monition. The order may be made by the judge under the Public Worship Regulation Act, 1874 (*m*). If an inhibition of an incumbent remains in force for more than three years, or if a second inhibition in regard to the same monition is issued within three years from the relaxation of an inhibition, the benefice becomes void, though the bishop has power to postpone the avoidance for three months. An inhibition cannot be relaxed until the incumbent has, by writing under his hand in the form prescribed by the rules and orders under the Public Worship Regulation Act, undertaken to obey the monition (*n*). Under the Church Discipline Act the bishop may inhibit the accused party pending suit (*o*).

An incumbent may be inhibited under the Benefices Act, 1898, for negligence (*p*).

INJUNCTIONS. (*See* CANON LAW; VESTMENTS.)

INSTALLATION, the ceremony by which a bishop is "vested" in his bishopric. It is performed in his cathedral, and, in the province of Canterbury, by the Archdeacon of Canterbury, acting on the archbishop's mandate (*q*); in the province of York, by the deans of the respective cathedrals. The installation of an archbishop is called inthronization (*r*).

INSTITUTION is the commitment to the clerk by the ordinary of the cure of souls in a particular benefice. The clerk to be instituted must be in priest's orders, of sufficient learning, and a person against whose orthodoxy and morals no charge can be established (*s*). A bishop cannot collate, institute, or admit any person to a benefice until the expiration of one month after notice, in the prescribed manner,

(*m*) *Dale's case* (1881), 6 Q. B. D. 376.

(*n*) 37 & 38 Vict. c. 85, s. 13.

(*o*) 3 & 4 Vict. c. 86, s. 14.

(*p*) 61 & 62 Vict. c. 48, s. 9 (4). *See* CLERGY, Duties.

(*q*) Gib. 118.

(*r*) 1 Burn, 197.

(*s*) *Exeter* v. *Marshall* (1867), L. R. 3 E. & I. App. 39.

that he proposes to collate, institute, or admit such person, has been served on the churchwardens of the parish, who must publish the notice in the prescribed manner (*t*).

The bishop cannot refuse institution because the clerk's former bishop refuses to give him a testimonial as required by canon 39. He must state not only that the presentee is not a fit person, but in what respect he is not fit, and state it in such a manner as will enable the patron to take issue on the objection, for it must be borne in mind that he is dealing with a temporal right of property (*u*). A bishop is justified under the general law in refusing to institute for simony (*x*), or where the clerk has taught manifestly unorthodox doctrines and refuses to recant, or where he has habitually performed undoubtedly illegal acts of ritual (*e.g.*, used a chasuble) and refuses to undertake not to repeat the offences (*y*); or in Wales or Monmouthshire, where the clerk is ignorant of Welsh, and the bishop considers a knowledge of Welsh necessary (*z*); and also, it would seem, when the presentee is an alien (*a*), or a drunkard (*b*); also on the ground that at the date of presentation the presentee had not been ordained three years; that he is unfit for the discharge of the duties of the benefice by reason of physical or mental infirmity or incapacity, pecuniary embarrassment of a serious character, grave misconduct or neglect of duty in an ecclesiastical office, evil life, having by his conduct caused grave scandal concerning his moral character since his ordination (*c*).

The words of institution are as follows:—"I institute thee

(*t*) 61 & 62 Vict. c. 48, s. 2 (2) and rules.

(*u*) *Exeter* v. *Marshall* (1867), L. R. 3 E. & I. Ap. 39.

(*x*) See also Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 2 (1) (a), (b).

(*y*) *Heywood* v. *Manchester* (1884), 12 Q. B. D. 404.

(*z*) 1 & 2 Vict. c. 106, s. 104; 48 & 49 Vict. c. 54, s. 2; and *Abergavenny* v. *Llandaff* (1888), 20 Q. B. D. 460.

(*a*) 4 Inst. 338; 1 Burn, 144. *And see* ALIEN.

(*b*) *Marriner* v. *Bishop of Bath and Wells* (1876), reported [1893] P. 145.

(*c*) Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 2 (1) (b). The procedure under this Act is set out in sect. 3 of the Act, and the rules made thereunder. There is an appeal from the bishop's refusal to institute. *See* APPEAL.

to such a benefice to have the cure of souls, receive thy cure and mine" (*d*). An entry of the institution is to be made in the bishop's register.

Institution or collation gives the clerk a right *in re*. Therefore he may enter upon the glebe and take the tithes, though he cannot yet sue for them (*e*); he may also celebrate Divine Service. Before institution the clerk must make the declaration of assent to the Thirty-nine Articles and Prayer Book, and against simony, and also take the oath of allegiance (*f*); and after institution must read himself in (*g*). Institution amounts to a general licence from the bishop to officiate in any consecrated building in the parish, but a further licence is necessary to officiate in a place not consecrated (*h*).

By institution or collation the church is full, so that there can be no fresh presentation till another vacancy, at least in the case of a common patron; but the church is not full against the Crown till induction; nay, even if the clerk has been instituted upon the Crown's presentation, the Crown may revoke it before induction and present another clerk (*i*). No stamp duties are now payable on institution or collation (*k*).

INSURANCE. Every incumbent must insure and keep insured the house of residence and farm and other buildings, outbuildings, and offices, and also the chancel of the church (when he is liable to repair it) against fire in some office to be selected by him and approved by the Governors of Queen Anne's Bounty, in at least three-fifths of the value, in the joint names of himself and the governors. The receipts for the premiums must be exhibited at the next bishop's or archdeacon's visitation (*l*). If the incumbent neglects to insure,

(*d*) 1 Inst. 344a; and 1 Burn, 167.
(*e*) Cruise, Dig. t. 21, 6.
(*f*) 28 & 29 Vict. c. 122, ss. 5, 9, 11. For forms, *see* OATH.
(*g*) *See* READING IN.
(*h*) *Moysey* v. *Hillcoat* (1828), p. 30.
(*i*) Co. Litt. 344.
(*k*) See Stamp Act, 1891; and 40 & 41 Vict. c. 13, s. 13, rep. For statutory fees, see *London Gazette*, 1908, p. 7303.
(*l*) 34 & 35 Vict. c. 43, ss. 54—56.

or to insure sufficiently, he will have to make good any loss or damage to the satisfaction of the bishop, under pain of sequestration (*m*); the proceedings for ascertaining and recovering the amount of the damage being similar to those in the case of dilapidations (*q. v.*).

INTERDICT, an ecclesiastical censure, whereby, in Popish times, the Divine Services were prohibited, either to particular persons or in particular places, or both; now obsolete in England.

INTEREST in suit. (*See* ECCLESIASTICAL COURTS.)

INTERVENER. An intervener is a person who interposes in a suit to which he was not originally a party. In Courts other than the Ecclesiastical and the Probate Division, he is called a third party (*n*).

IRELAND, Church of. In the sixteenth century the Reformation was effected in Ireland, but not with the same success as in the Church of England, in a great measure, it is said, because the reformed Prayer Book was not at once translated into the native tongue. The result was that the great majority of Irishmen continued to adhere to the Church of Rome, and remain Papists to the present day.

In 1800, by the Act of Union, the Churches of England and Ireland were united into one Protestant Episcopal Church, called the United Church of England and Ireland (*o*). In 1869 the Church of Ireland was disunited from the Church of England, disestablished, and placed on a similar footing to the other religious communities in Ireland (*p*). All Church property, whether belonging to the Ecclesiastical Commissioners or to any archbishopric, bishopric, or benefice, was vested in "the Commissioners of

(*m*) 34 & 35 Vict. c. 43, s. 57.
(*n*) See R. S. C. Ord. XII. r. 23; Ord. XVI. r. 48.
(*o*) 39 & 40 Geo. 3, c. 67.
(*p*) 32 & 33 Vict. c. 42.

Church Temporalities in Ireland" (*q*), who have been succeeded by the "Irish Land Commission" (*r*). Compensation was awarded to persons deprived of income and to lay patrons. Every ecclesiastical corporation, whether sole or aggregate was dissolved, and the prelates were deprived of their seats in the House of Lords; but every then present archbishop, bishop, dean, and archdeacon was to retain his title and precedence. From and after the passing of the Act the clergy and laity became enabled to assemble in synods, or convention, in any way they chose, and to frame constitutions and regulations for the general management and good government of their Church and its property, and to appoint a representative body to represent the Church and hold property on behalf of it (*s*). Such a body has been appointed and incorporated by Royal Charter under the name of the Representative Church Body, with powers to acquire, hold, and sell land (*t*): and considerable endowments have already been made. The surplus funds, after buying out vested interests, amounted to about 12,000,000*l*., and have been devoted to various secular purposes.

In pursuance of its new powers the Church of Ireland revised the Prayer Book and Canons, rejecting the Athanasian Creed from its form of public worship, and making other alterations for the purpose of emphasizing its Protestantism (*u*); but it remains in communion with the Church of England, and in its main features is identical with it.

JEWS have been settled in Britain from very early times, before the Christian era. They have always preserved their ancient religion, for which they suffered cruelly in the Middle Ages; but happily nearly all their disabilities, in this country, are now removed. By the Jews' Relief Act,

(*q*) Sects. 3 to 13.
(*r*) 44 & 45 Vict. c. 71; 51 & 52 Vict. c. 49; 54 & 55 Vict. c. 48, ss. 10, 20, and 43.
(*s*) Sects. 19 to 22.
(*t*) 38 & 39 Vict. c. 42.
(*u*) *See* ABSOLUTION.

1858, the official ecclesiastical patronage of a public office held by a professing Jew devolves on the Archbishop of Canterbury; and a Jew may not advise the Sovereign touching the appointment to or disposal of any preferment in the Established Churches of England or Scotland, under penalty of being guilty of a high misdemeanour, and disabled for ever from holding an office under the Crown (*x*). But should a Jew be the owner of an advowson in his own right, it would seem that he may present to it (*y*). Jews are supposed by some authorities to be excluded from the office of Lord Chancellor and other high offices of State, from which Papists are also excluded (*z*), but it seems to be clear that the contrary view is the correct one (*a*). Jews have special privileges as to the mode of celebration of marriage (*q. v.*), and as to Sunday trading (*b*), and have the same privileges as Protestant dissenters as to schools, places of worship, education, and charitable purposes, and property held therewith (*c*).

JUDGES, ecclesiastical, include the King in Council, the members of the Judicial Committee of the Privy Council, the Dean of Arches (*q. v.*), and chancellors (*q. v.*), vicars-general, commissaries, and officials, also the archbishops,

(*x*) 21 & 22 Vict. c. 49, s. 4.

(*y*) 2 Ste. Com. 728; and see *Mirehouse* v. *Rennell* (1832), 8 Bing. 490.

(*z*) 2 Ste. Com. 722.

(*a*) Jews were formerly excluded from both Houses of Parliament, and many offices by reason of the form of the old Oaths of Allegiance, Supremacy and Abjuration, which had to be taken "upon the true faith of a Christian" (13 & 14 Will. 3, c. 6; 1 Anne, st. 1, c. 22). This declaration was held to be an essential part of the oath (*Salamons* v. *Miller* (1853), 8 Exch. 778). In 1858 an Act was passed enabling Jews to omit the words as to the Christian faith (21 & 22 Vict. c. 49; see also c. 48). The same Act provided (sect. 3) that nothing therein was to enable a Jew to hold certain offices, including that of Lord Chancellor. By the Promissory Oaths Act, 1868, the words referring to the Christian faith were omitted from the forms of Oath of Allegiance, and was not included in the new form of Official Oath (sect. 3), and the Judicial Oath (31 & 32 Vict. c. 72, s. 4), which the Lord Chancellor and other Judges are required to take. Sects. 1, 2, and 3 of the Act of 1858 were therefore repealed by the Promissory Oaths Act, 1871, 34 & 35 Vict. c. 48. There seems therefore to be nothing to prevent a Jew holding any of the offices mentioned in the Schedule to 31 & 32 Vict. c. 72. Lord Coleridge was of this opinion in *Reg.* v. *Ramsay* (1883), 15 Cox, C. C. 235.

(*b*) *See* LORD'S DAY.

(*c*) 9 & 10 Vict. c. 59, s. 2; 18 & 19 Vict. c. 86, s. 2.

bishops, archdeacons and rural deans. The Dean of Arches, chancellors, commissaries, and officials are usually laymen and barristers.

LAMBETH DEGREES. Degrees conferred by the Archbishop of Canterbury, as Blackstone says, "in prejudice of universities." This power is a remnant of the papal authority reserved to the Archbishop and the Crown by 25 Hen. 8, c. 21 (*d*). All the usual degrees may be conferred with or without examination, and on the laity as well as the clergy. The degree, of course, confers no right as a member of any university. The recipient is entitled to wear the academic costume of the university of which the archbishop himself is a member. The fees payable are heavy.

The Lambeth degree in medicine (unless conferred prior to the passing of the Medical Act, 1858) gives no qualification to practise, and a practitioner using it as a qualification is liable to penalties (*e*).

LAPSE. A species of forfeiture whereby the right of presentation accrues to the ordinary by neglect of the patron to present, to the metropolitan by neglect of the ordinary, and to the King (as patron paramount) by neglect of the metropolitan (*f*). Lapse takes place after six calendar months from the time the person in default had notice of the vacancy, *i.e.*, 182 days, exclusive of the day of the avoidance (*g*). The patron is deemed to have immediate notice of an avoidance by death (except, perhaps, in the case of the incumbent dying beyond the sea), or by cession, *i.e.*, the incumbent taking another benefice; but in the case of a clerk being refused or deprived by the bishop, or resigning, actual notice must be given to the patron; and the better opinion seems to be that the six months will run from the date of giving the notice (*h*).

(*d*) *See* DISPENSATION.
(*e*) See 21 & 22 Vict. c. 90, Sch. A. 10; see *R.* v. *Baker* (1892), 66 L. T. 416.
(*f*) 2 Bl. Com. 276.
(*g*) 2 Ste. Com. 729.
(*h*) Burn, tit. Lapse.

An *ecclesiastical* patron is not entitled to such notice where a clerk is refused, it being considered that he is competent to present an able clerk (*h*). Where the forfeiture is caused by the wilful failure of the clerk to read himself in, no title to present by lapse accrues until the ordinary has given six months' notice thereof to the patron (*i*), and similarly where a clerk is refused or deprived for simony (*k*); prescribed notices are necessary under Pluralities Act (*l*), and under Clergy Discipline Act, 1892 (*m*); there are special rules under the Benefices Act, 1898 (*n*).

If the patron presents after the time has expired, but before the bishop, metropolitan, or (in some cases) the Sovereign has filled the church, the bishop must receive his clerk; for lapse is only a provision for avoiding undue delay (*o*). Where undue delay is caused by the neglect of the bishop, or through the right of presentation being contested (*p*), neither the bishop nor his superiors can take advantage of a lapse (*q*).

In the case of an advowson donative there was no lapse, but it is said the bishop had power to compel the patron to present (*r*).

LAY IMPROPRIATOR. (*See* VICAR; CHANCEL.)

LAY MINISTRATIONS. (*See* PUBLIC WORSHIP.)

LEASES. Leases by incumbents of *freeholds* must be in accordance with the provisions of the hereafter-mentioned statutes of Victoria, except in the case of lands accustomed to be leased under certain "enabling" and "disabling" statutes, as to which the old law may be (but is not usually)

(*h*) Burn, tit. Lapse.
(*i*) 28 & 29 Vict. c. 122, s. 7. *And see* READING IN.
(*k*) 31 Eliz. c. 6, s. 6.
(*l*) 1 & 2 Vict. c. 106, s. 58.
(*m*) 55 & 56 Vict. c. 32, s. 6 (3).
(*n*) 61 & 62 Vict. c. 48, s. 5.
(*o*) 2 Bl. Com. 277; 2 Inst. 273; 1 Geo. 1, st. 2, c. 10, s. 7.
(*p*) 61 & 62 Vict. c. 48, s. 5.
(*q*) 2 Bl. Com. 278.
(*r*) Cruise, t. 21, 17.

followed (*s*). Leases by incumbents who came into possession of *copyholds* after 6th of August, 1861, must in all cases be in accordance with these statutes (*t*).

By the Pluralities Act, 1838, the house of residence, or the buildings, gardens, orchards, or appurtenances necessary for the convenient occupation of the same, can only be let subject to a condition for avoiding the letting, upon a copy of the bishop's order requiring the spiritual person to reside being served upon the occupier; otherwise it is void, and any person continuing wilfully to hold any such residence shall forfeit the sum of 40*s*. a day (*u*).

By the 5 & 6 Vict. c. 27, incumbents are empowered, with the consent of the bishop and patron, and if necessary of the lord of the manor, to grant agricultural leases for any term not exceeding fourteen years, or twenty years where the lessee covenants to cultivate, build, drain, or repair in a more expensive manner than is usual. The Act does not apply to the parsonage, offices, and ten acres of glebe most convenient for occupation, except that if the ten acres are five miles or upwards distant from the parsonage (or if none, the church) they may be leased. No fine can be taken, the rent must be payable quarterly, the lease must be without impeachment of waste, and must contain the various covenants as to cultivation, &c. mentioned in the Act. The consent of bishop, patron, and incumbent is necessary to the surrender of any such lease (sect. 5). The counterpart lease and all other documents must be deposited in the bishop's registry. Registrar's fee 5*s*., and no more, on the deposit; 1*s*. for a search, and 6*d*. for each folio of seventy-two words of any office copy certified.

By the Agricultural Holdings Act, 1883 (which repeals the Act of 1875), various provisions are made as to compensation to tenants for improvements, notice to quit, and dis-

(*s*) *Jenkins* v. *Green* (1859), 28 L. J. Ch. 822. As to the old law, see Woodfall's Landlord and Tenant.

(*t*) 24 & 25 Vict. c. 105, s. 1; 25 & 26 Vict. c. 52, s. 1.

(*u*) Sect. 59, but the omission of this condition does not render the lease absolutely void, until the bishop actually orders residence. *Rickard* v. *Graham*, [1910] 1 Ch. 722.

tress for rent; but the power given by the Act cannot be exercised by an incumbent without the previous approval in writing of the patron, or of the Governor of Queen Anne's Bounty; or by an archbishop or bishop, without the like approval of the Estates Committee of the Ecclesiastical Commissioners (*x*).

By the Ecclesiastical Leasing Acts, 1842 and 1858 (which are read together as one Act), ecclesiastical corporations aggregate and sole are empowered to grant building leases for any term not exceeding ninety-nine years; and leases of running water, waterleaves, and wayleaves, and mining leases, for any term not exceeding sixty years. The consent of the Ecclesiastical Commissioners must be obtained in all cases and, where necessary, that of the lord of the manor; and a lease by an incumbent further requires the consent of the patron (*y*). These Acts do not apply to the Isle of Man (*z*), or to any college or corporation of vicars choral, priest vicars, senior vicars, custos and vicars, minor canons, or an ecclesiastical hospital or the master thereof, or to churchyards (*a*). No fine or premium can be taken except with the consent of the Ecclesiastical Commissioners, testified by deed under their common seal; and, being a sale *pro tanto*, possibly three months' notice in writing to the bishop is required (*b*). The lease must contain such covenants as are mentioned in the Acts, or as the Ecclesiastical Commissioners shall think proper and advisable (*c*).

By the Episcopal and Capitular Estates Act, 1851 (and various amending Acts (*d*)), ecclesiastical corporations aggregate and sole (other than incumbents), with the approval of the Estates Committee, may lease lands acquired under that Act from year to year, or for any term not exceeding fourteen years, or mining or building leases upon such terms as the

(*x*) 46 & 47 Vict. c. 61, ss. 38 and 39; am. 53 & 54 Vict. c. 57.
(*y*) 5 & 6 Vict. c. 108, ss. 21-27.
(*z*) 29 & 30 Vict. c. 81.
(*a*) *Rector, &c.* v. *City of London Real Property Co.*, [1896] P. 101.
(*b*) 5 & 6 Vict. c. 108, s. 30; 21 & 22 Vict. c. 57, s. 1.
(*c*) 5 & 6 Vict. c. 108, s. 1; 21 & 22 Vict. c. 57, s. 1.
(*d*) 14 & 15 Vict. c. 104; 17 & 18 Vict. c. 116; 22 & 23 Vict. c. 46;

commissioners may think fit. The Acts also contain provisions for sale of reversions, exchange, and enfranchisement.

By the Episcopal and Capitular Estates Act, 1860 (*e*), no lands assigned as the endowment of any See under the Act shall be granted by the archbishop or bishop otherwise than from year to year, or for a term of years in possession not exceeding twenty-one years, on the like terms as those contained in the above-mentioned Act of 5 & 6 Vict. c. 27. But with the approval of the Estates Committee of the Ecclesiastical Commissioners, mining, building, or other leases may be granted for such periods and on such conditions as they may think fit.

Since the passing of the Ecclesiastical Commission Act, 1868, none of the deans and chapters referred to in the Act, and no dean and chapter as to whom any Order in Council has been made under the Act for the transfer of property, &c., may demise any lands vested in them, except on similar terms to those provided by the above-mentioned Acts (*f*).

LECTURER is a species of assistant curate, whose ordinary duty is to preach. By immemorial custom, or by Act of Parliament, a lectureship may become permanently established, otherwise it can only be founded with the assent of patron, incumbent, and ordinary. In all cases the incumbent's assent (*g*), and the archbishop's or bishop's licence (*h*), are necessary to the appointment. Stamp duty on the licence, 10*s*.

A bishop may require the lecturer (if a clergyman, as he is now, almost without exception) to perform the duties of assistant curate as well as preacher, and may (subject to appeal to the archbishop) dismiss him from the office if he refuses or neglects to perform such duties (*i*). Lecturers

23 & 24 Vict. c. 124; 24 & 25 Vict. cc. 105, 131; 31 & 32 Vict. c. 114.

(*e*) 23 & 24 Vict. c. 124.

(*f*) 31 & 32 Vict. c. 114, s. 9.

(*g*) *Rex* v. *London* (1786), 1 T. R. 331.

(*h*) 14 Car. 2, c. 4, s. 15; *King* v. *Archbishop of Canterbury* (1812), 15 East, 117. *And see* PREACHING.

(*i*) 7 & 8 Vict. c. 59.

must, before officiating, make the declarations required by the Clerical Subscription Act (*k*).

LETTERS OF REQUEST, the mode by which the ordinary sends a case for trial before the judge of the Provincial Court instead of trying it himself. The Provincial Court is bound to accept letters of request (*l*). There is no statutory form.

LICENCE. A licence is similar to a dispensation (*q. v.*).

Licences to marry are of two kinds—(1) An ecclesiastical licence for marriage without banns according to the rites of the Church of England; (2) the superintendent registrar's licence.

Ecclesiastical licences are of two kinds—special and common. *Special* licences are granted by the Archbishop of Canterbury under 25 Hen. 8, c. 21, to marry at any convenient time and place, and are not interfered with by the Marriage Act of 1824. The cost is 25*l.* over and above 5*l.* stamp duty. *Common* licences are granted by the bishop or his surrogate upon the oath or affirmation of one of the parties before the surrogate that one of them has had his or her usual place of abode for fifteen days preceding in the parish. Such a licence is simply a substitute for banns (*q. v.*). It costs 2*l.* 2*s.* 6*d.*, including stamp duty, 10*s.*

Superintendent registrar's licence, which he can issue with his certificate (*q. v.*), is granted upon similar conditions to the "common" licence. It is good for marriages other than those of the Church of England (*m*). It is obtainable *one* whole day after notice (*n*), and costs 1*l.* 10*s.* (*o*), and 10*s.* stamp duty. (Curate's licence, *see* CURATE; licence for non-residence, *see* RESIDENCE.)

(*k*) *See* OATH.
(*l*) *Sheppard* v. *Bennett* (1869), L. R. 2 P. C. 450.
(*m*) *See* MARRIAGE.
(*n*) 19 & 20 Vict. c. 119, s. 9.
(*o*) *Ibid.* s. 10; and for form of licence, see Sched. C.

When not otherwise specified the stamp duty on an ecclesiastical licence is 2*l*. (*p*).

LIGHTS. It may be safely affirmed that for more than 300 years after Christ there was no ceremonial use of lighted candles, torches, or lamps in the worship of the Christian Church (*q*).

Lighted candles are not "ornaments" within the rubric, as they are not prescribed by the Prayer Book of 1549, and they are not subsidiary to, for they do not aid or facilitate, much less are they necessary to the service, unless required for the purpose of giving light. The use of them was prescribed before the Reformation, and their very general disuse afterwards (whatever exceptional cases to the contrary might be produced) affords a very strong contemporaneous and continuous exposition of the law upon the subject. It has, therefore, been decided that lighted candles on the Lord's Table, or on a ledge immediately above it, are illegal except when required for the purpose of giving light (*r*).

In the same way lighted candles held on each side of clergyman when reading gospel, or placed one on each side of the Communion Table, are unlawful, unless required for light (*s*).

LORD'S DAY, "commonly called Sunday" (*t*). By the statute of Charles (*u*) no persons (except innkeepers and milkmen in certain cases, barbers (*x*), necessary cookshops, and sellers of chipped potatoes, with or without fish (*y*))

(*p*) 54 & 55 Vict. c. 39.

(*q*) Smith's Dict. of Chr. Ant.

(*r*) *Martin* v. *Mackonochie* (1868), L. R. 2 P. C. 365. Archbishop Benson was of opinion that two still lights are lawful at the Communion Service if alight before the service begins and until after it ends, even if not wanted for the purpose of giving light. This view was not affirmed by Privy Council on appeal. *Read* v. *Lincoln*, [1891] P. 88; [1892] A. C. 644; see *St. Paul, Camden Square* (1898), 14 T. R. 85, 156.

(*s*) *Sumner* v. *Wix* (1870), L. R. 3 A. & E. 58.

(*t*) Can. 13.

(*u*) 29 Car. 2, c. 7; *Billingham* v. *Menhinick* (1909), 73 J. P. 384.

(*x*) *Palmer* v. *Snow*, [1900] 1 Q. B. 725.

(*y*) *Bullen* v. *Ward* (1905), 93 L. T. 439.

may work at their ordinary calling upon the Lord's Day or any part thereof, works of necessity and charity only excepted; but by the Sunday Observation Prosecution Act, 1871, which has been continued and is now in force, proceedings under the Act of Charles can only be commenced with the consent in writing of the chief officer of police, the stipendiary magistrate, or two justices of the peace of the district (*z*). No child, young person or woman may be employed on Sunday in a factory or workshop, except in the case of Jews employed by a Jewish occupier, and then only provided that the factory or workshop is closed on Saturday, and is not open for traffic on Sunday (*a*).

Sunday entertainments open to the public for money are forbidden by the Act of 1780, but the Crown may remit the penalties (*b*) (keeper, 200*l.*; chairman, 100*l.*; doorkeeper, 50*l.*; advertisers, 50*l.*). The Brighton Aquarium was held to be a place of amusement within the Act (*c*). But a place duly and honestly registered as a place of public worship, in which no music but sacred music is performed or sung—where nothing dramatic is introduced, where the discourses delivered are intended to be instructive and contain nothing hostile to religion, where the object of the promoters may be either to advance their own views of religion or make science the handmaid of religion,—is not within the statute (*d*). In spite of these Acts it would seem to be lawful to open premises for billiards, and the sale of ice-cream on Sundays (*e*); also cinematograph exhibitions, unless expressly prohibited by the local authority (*f*).

(*z*) 34 & 35 Vict. c. 87, s. 1; *Thorpe* v. *Priestnall*, [1897] 1 Q. B. 159; *Rex* v. *Halkett*, [1910] 1 K. B. 50; *Rex* v. *Mead*, [1902] 2 K. B. 212.

(*a*) 41 & 42 Vict. c. 16, ss. 21, 50, and 51; *Goldstein* v. *Vaughan*, [1897] 1 Q. B. 549. As to Jewish bakers, see *Rex* v. *Bros* (1902), 85 L. T. 581; and the Bread Act, 1822 (3 Geo. 4, c. cvi.).

(*b*) 21 Geo. 3, c. 49; 38 & 39 Vict. c. 80.

(*c*) *Warner* v. *Brighton Aquarium* (1875), L. R. 10 Ex. 291.

(*d*) *Baxter* v. *Langley* (1868), L. R. 4 C. P. 21.

(*e*) *Rossi* v. *Edinburgh*, [1905] A. C. 21; but see p. 31, and comments in *L. C. C.* v. *Bermondsey*, [1911] 1 K. B. 452.

(*f*) *L. C. C.* v. *Bermondsey*, [1911] 1 K. B. 445.

A corporation cannot make a bye-law to prohibit bands of music in the streets on Sunday. A special Act of Parliament is necessary (*g*).

Public or secular business which falls to be done on any Lord's Day, *e.g.*, a meeting of any vestry or corporation, whether ecclesiastical or civil, must be held on the Saturday next preceding or the Monday next ensuing, at the like hour; and terms of office expire in the like manner (*h*). In computing time Sunday often counts as no day, but the plain meaning of the particular Act must be adhered to in every case (*i*).

LORD'S SUPPER, or the Holy Communion, also called the Thanksgiving, and known in the Romish Church as the Mass, is one of the two Sacraments of the Church of England (*k*). It is a sign of the love that Christians ought to have one to another and of our redemption by Christ's death (*l*). It is usually partaken of by eating a small piece of bread and drinking a little wine, but at different times in the history of the Church it has taken the form of, or been accompanied by, a substantial meal. In the Church of England the Lord's Supper can only be consecrated and administered by an episcopally ordained priest (*m*). According to the rubric there can be no public celebration except there be a convenient number to communicate with the priest according to his discretion, *three* persons at least; or any private communion of the sick unless *two* persons at least communicate with the priest (*n*); and Lord Penzance considered it quite practicable in all cases for the priest to ascertain whether the lawful number will communicate (*o*). Those who intend to communicate must be concentrated near

(*g*) *Johnson* v. *Croydon* (1886), 16 Q. B. D. 708.

(*h*) 3 & 4 Will. 4, c. 31, repealed as to boroughs within the Municipal Corporations Act, 1882.

(*i*) *Ex parte Simpkin* (1859), 2 E. & E. 392; *Milch* v. *Frankau*, [1909] 2 K. B. 100.

(*k*) Art. 25.

(*l*) Art. 28.

(*m*) 13 & 14 Car. 2, c. 4, s. 14.

(*n*) See *Parnell* v. *Roughton* (1874), L. R. 6 P. C. 46.

(*o*) *Clifton* v. *Ridsdale* (1876), 1 P. D. 345.

or round the Communion Table. In cathedral and collegiate churches and colleges where there are many priests and deacons they must all receive the Communion every Sunday at the least, except they have a reasonable cause to the contrary (*p*). The Sacrament must be received kneeling, but no adoration is intended thereby or ought to be done (*q*). The Sacrament must be administered in both kinds (*r*). After the blessing the surplus bread and wine is to be reverently consumed according to the rubric, and for carrying out this purpose the vessels may be cleansed by the minister in church, provided it is done after the service is ended and without ceremony or prayers (*s*). In many particulars our Church differs from the present practice of the Greek and Roman Churches, but is supposed to be in accordance with the customs of the primitive Church. In the Romish Church certain innovations of the Middle Ages, *e.g.*, communion in one kind, solitary masses by priests, and adoration of the elements are enjoined. The Romish (and, of course, the English) Church has departed from the very early practice still continued by the Eastern Church of administering the Communion to infants.

The Lord's Supper may be administered to an impotent or very dangerously sick person in a private dwelling-house provided *one* other person communicates with the sick person and the priest (*t*). This provision is necessary as the consecrated elements may not now (as in pre-Reformation times) be reserved or carried about (*u*). The minister may not privately administer the Communion, except in cases of great necessity, under pain of suspension for the first offence and excommunication for the second (*x*). In time of plague, sweat, or such other like contagious diseases when no person can be got to communicate with the sick person for fear of

(*p*) Rubric; and see Can. 23.
(*q*) Black Rubric at end of Communion Service; and see Art. 28.
(*r*) Art. 30; and 1 Edw. 6, c. 1.
(*s*) *Read* v. *Bishop of Lincoln*, [1891] P. 32.
(*t*) Rubric. *See* CONGREGATION.
(*u*) Art. 28; *Oxford* v. *Henly*, [1907] P. 88.
(*x*) Can. 71; *Nesbitt* v. *Wallace*, [1901] P. 364.

infection, upon special request of the deceased the minister may only communicate with him (*y*); but it would seem that in no case may a minister administer the Sacrament to himself *alone*.

Every parishioner has a *primâ facie* right to partake of the Lord's Supper, and "the minister shall not without *lawful cause* deny the same to any person that will devoutly and humbly desire it, any law, statute, ordinance, or custom contrary thereunto in any wise notwithstanding" (*z*). The "lawful causes," according to the rubric (which is a statutory enactment), are that the parishioner (1) is an "open and notorious evil liver," or (2) has done "wrong to his neighbours by word or deed so that the congregation be thereby offended," or (3) is in hatred or malice with his neighbour, (4) refuses to kneel, or (5) has neglected to give notice of his intention to present himself, though this last cause is doubtful. There are further causes mentioned in Canon 27, such as "refusing to be present at public prayers," and "being a common and notorious depraver" of the Book of Common Prayer or the XXXIX. Articles, and "speaking against and depraving the sovereign's authority in causes ecclesiastical"; but a layman cannot (though a clergyman may) be repelled for any of these canonical offences, unless it is also a "lawful cause" at the statute law, a point left open in *Jenkins* v. *Cook* (*a*). A person has been held not to be an "evil liver" for attending a Wesleyan Chapel (*b*), or for marrying his deceased wife's sister (*c*); and in a case where a person of irreproachable moral character published volumes of selections from the Old and New Testament and the Book of Common Prayer, and explained (in a private letter) that the construction which he placed upon certain parts of the Bible was not the same as the construction which, in his opinion, was generally placed thereon, and that this

(*y*) Rubric.
(*z*) 1 Edw. 6, c. 1, s. 8.
(*a*) *Jenkins* v. *Cook* (1876), in Arches Court, L. R. 4 A. & E. 463, in P. C. 1 P. D. 80.
(*b*) *Swayne* v. *Benson* (1889), 6 T. L. R. 7.
(*c*) *Rex* v. *Dibdin*, [1910] P. 57, C. A.; and see Bill 239 of 1911.

was the reason why he omitted certain portions; he was held (by the Privy Council) to be *not* an "open and notorious evil liver" nor "a common and notorious depraver of the Book of Common Prayer" (*c*).

In the Arches Court, it has been held that the avowed and persistent denial of the existence and personality of the devil constitutes a person an "evil liver" and also a "depraver of the Book of Common Prayer"; but it is doubtful whether this would be upheld by the Privy Council (*d*).

The tendency of the Supreme Court of Appeal is in the direction of great latitude in doctrinal matters; but it is to be presumed that a Papist, and possibly a Unitarian, would be considered as doctrinally "evil livers" within the rubric and could be refused the Holy Communion. It is the clergyman's statutory and canonical duty to refuse an undoubted "evil liver" until he repents. Every parishioner is supposed to communicate three times a year, of which Easter should be one (*e*).

The priest must give notice or "warning," according to the rubric, of his intention to celebrate the Lord's Supper, and notice must be given to the priest by those who intend to be present. Persons not giving notice are liable to be refused the Sacrament, though it has been thought that a clergyman is not justified in refusing solely on this ground (*f*).

The bread and wine are to be provided by the churchwardens (*g*) if they have any funds for the purpose, otherwise by the minister (*e*).

Although only a priest can "*consecrate* and *administer*" the Lord's Supper, there seems to be no doubt that a deacon may legally read the other parts of the Communion Service, and that no penalties could be enforced against him, unless it is proved that he both "consecrated *and* administered" (*h*).

(*c*) See note (*a*), previous page.
(*d*) No decision on this point was given by the P. C. in *Jenkins* v. *Cook*, *ubi sup.*
(*e*) Rubric.
(*f*) Urlin, p. 32.
(*g*) Can. 20.
(*h*) *See* DEACON.

The duty is, however, primarily cast upon the priest by the rubrics. (As to the division of the Communion Service, *see* PUBLIC WORSHIP.)

The following points have been decided as to the ritual of the Lord's Supper:—(1) The chasuble, alb, and tunicle are illegal everywhere, and the cope in ordinary parish churches (*i*). (2) The cup and paten may not be elevated above the head of the minister (*k*). (3) Prostration and kneeling before the consecrated elements is illegal; the priest must stand during the Prayer of Consecration, and may not kneel at any time during the Communion Service, except when expressly directed so to do by the rubric (*l*). (4) Lighted candles may not be used except when wanted for giving light (*m*). (5) The minister may, perhaps, during the Prayer of Consecration take any position (eastward or westward), provided he does not prevent the people from seeing (*n*). (6) The bread must be pure wheaten bread, not wafer bread (*q. v.*). (7) The wine must not be ceremonially and publicly mixed with water (*o*). (8) Sign of the cross (*q. v.*) is illegal. (9) Incense (*q. v.*) may not be used. (10) Neither the little bell known as the "sacring" bell nor one of the church bells may be rung during the Prayer of Consecration (*p*). (11) The alms (*q. v.*) may not be elevated or placed on a credence table (*q*). (12) Crucifixes (*q. v.*) and images (*q. v.*) may not be used ceremonially. (13) The "ceremony of ablution" is illegal (*r*). (14) The *Agnus Dei* may be sung (*s*). (15) The elements may not be reserved (*t*).

Doctrine. The doctrine of the Church of England as to

(*i*) *See* VESTMENTS.
(*k*) Art. 29, and *Martin* v. *Mackonochie* (1868), L. R. P. C. 365.
(*l*) *Ridsdale* v. *Clifton, ubi sup.*; *Martin* v. *Mackonochie, ubi sup.*
(*m*) *See* LIGHTS.
(*n*) But this is doubtful law. *See* EASTWARD POSITION.
(*o*) *See* MIXED CHALICE.
(*p*) *Elphinstone* v. *Purchas* (1870), L. R. 3 A. & E. 98; *St. John, Clevedon*, [1909] P. 6.
(*q*) *Flamank* v. *Simpson* (1868), L. R. 2 A. & E. 218.
(*r*) *Read* v. *Bishop of Lincoln*, [1891] P. 32.
(*s*) *See* SINGING.
(*t*) *Oxford* v. *Henly*, [1907] P. 88. *See* RESERVATION.

the Lord's Supper is that it is (1) a commemorative rite, (2) a means of grace. It denies that there is any "corporeal presence" or "real presence of the natural body," which, of course, would overthrow the nature of a sacrament or sign (*u*). It is a *spiritual* rite only (*u*), in which the wicked are in nowise partakers, although they carnally and visibly press with their teeth the sign or sacrament of the body and blood (*x*). The unworthiness of the minister (which would seem to include the case of the celebrant not being a minister at all) does not hinder the effect of the sacrament (*y*). Although lay baptism is permitted, the Church of England does not allow a deacon or a layman, even in urgent cases, to administer the Lord's Supper. In this it is not in accord with the primitive Church (*z*). It, however, teaches that a person may in urgent circumstances eat and drink the body and blood of our Saviour Christ elsewhere than at Holy Communion, or, as it is put, in the Communion of the Sick, "although he do not receive the sacrament with his mouth" (*a*).

LORD'S TABLE, or "the Table," "the Holy Table," "the Communion Table." It is called the "altar" in the coronation service and *per incuriam* in certain statutes, but never in the Prayer Book. "The Lord's Table" is the correct name (*b*), for it is no longer an altar of sacrifice, but merely a table, at which the communicants partake of the Lord's Supper, and the distinction between an altar and a Communion table is in itself essential and deeply founded in the most important difference in matters of faith between Protestants and Romanists (*c*).

(*u*) Art. 28. *And see* ARTICLES and PRESENCE.

(*x*) Art. 29.

(*y*) Art. 26.

(*z*) *See* PUBLIC WORSHIP; LAY MINISTRATION.

(*a*) *Read* v. *Bishop of London*, [1891] P. 32.

(*b*) *Martin* v. *Mackonochie*, 2 A. & E. 116; and rubrics.

(*c*) *Per* P. C. in *Liddell* v. *Westerton* (1857), 5 W. R. 475; Moore, Sp. Rep. 176, followed in *Sheppard* v. *Bennett*; *Hayes* v. *Fulford*, [1910] P. 18. *See* SACRIFICE. Nowhere in the Prayer Book is the table called "altar." In a Roman Catholic church there is an altar or place

It must be of wood and *easily* moveable (*d*), and covered in time of Divine Service with a carpet of silk or other decent stuff, which may be coloured (*e*). At Communion time it must have upon it a fair white linen cloth and may then stand in the body of the church or in the chancel (*f*), either crosswise or lengthwise (*g*). As a matter of custom it now usually stands "crosswise" against the east wall; but it may be moved if convenience is thereby promoted, and without a faculty (*h*). It must not be raised above the level of the chancel floor, and the steps leading from the nave to the chancel must not be arranged so as to form a pediment for the purpose of raising it up (*i*). A cross (*q. v.*) may not be attached to it, nor a baldachino (or canopy) erected over it (*j*), but over or behind it there may be placed a raised ledge or re-table or super-altar (*k*).

It is admitted by all that the earliest Christian tables were of wood. In Africa this was so up to the end of the fourth century, and in England, it is said, up to about 1100 A.D. (*l*). Stone altars afterwards became usual, until at the Reformation the ancient moveable wooden tables were restored. In primitive times, and again in the reign of Elizabeth, the table stood forward, some distance from the east wall. Portable altars are used by the Greek and Roman Churches, and in the Greek Church consecrated altar cloths, slabs of wood, or in their absence a leaf of the Gospels, or even the hands of the deacons may be used as holy tables (*l*). In the

where the priest offers sacrifice. In a Protestant church there is no altar in the same sense, but there is a communion table on which bread and wine are placed. *Parker* v. *Leach* (1866), 4 Moore, N. S. 199.

(*d*) *Faulkner* v. *Litchfield* (1845), 9 Jur. 234; *Liddell* v. *Westerton*, in P. C., *ubi sup.* As to marble mosaics being suspended round the table, as being "decent stuff," see *St. Luke's* v. *Wheeler*, [1904] P. 257. A marble top is illegal: *Hayes* v. *Fulford*, [1910] P. 18.

(*e*) Can. 82. *Elphinstone* v. *Purchas* (1870), L. R. 3 A. & E. 107.

(*f*) Rubric and Can. 82.

(*g*) *Ridsdale* v. *Clifton* (1877), 2 P. D. 341.

(*h*) See joint opinion of Sir R. B. Finlay, Q.C., M.P., and the Author, published by the Church Association. *And see* FACULTY.

(*i*) *Bradford* v. *Fry* (1878), 4 P. D. 105.

(*j*) *White* v. *Bowron* (1873), L. R. 4 A. & E. 207.

(*k*) *See* RE-TABLE, and *Durst* v. *Masters* (1876), 1 P. D. 373.

(*l*) Smith's Dict. of Chr. Ant.

English Church, when the Holy Communion is administered privately to the sick, there seems to be no direction as to the kind of table to be used.

A second table is allowed in certain cases (*m*), and it is not necessary that the portion of the church in which the second table is situated should be partitioned off from the rest of the church, though this is often, perhaps, generally desirable (*n*).

LUNATIC ASYLUM CHAPLAIN. Under the Lunacy Act, 1890, the visiting committee of every asylum shall appoint a chaplain, who must be in priest's orders and licensed by the bishop of the diocese (*o*). The licence is revocable by the bishop. The chaplain's duties are to perform Divine Service, according to the rites of the Church of England, on every Sunday, Christmas Day, and Good Friday, and such other services as the committee may appoint. If a patient is of a religious persuasion differing from that of the Established Church, a minister of his persuasion, at the request of the patient or his friends, may, with the consent of the medical officer and under such regulations as he approves, visit the patient (*p*).

A superannuation allowance not exceeding two-thirds of his salary may be granted to a chaplain who is incapacitated by confirmed illness, age, or infirmity, or who has served not less than fifteen years and is not less than fifty years old (*q*). Service in several asylums of the same local authority is counted as if all such asylums had constituted only one asylum (*r*).

(*m*) *E.g.*, for saving of expense of heating where the congregation is small and economising the minister's voice, but not to enable the vicar to have eucharistic services for children: *St. Michael's* (1908), 25 T. L. R. 95.

(*n*) *Per* Dibdin, D.A., *St. James'*, [1907] P. 380; for reasons to the contrary, see *ibid.* p. 382; *St. Peter's*, [1894] P. 350; *St. Paul's* (1909), 25 T. L. R. 228; *St. Mark's*, [1898] P. 114; *St. Anne's*, [1901] P. 76; *St. Andrew's* (1909), 25 T. L. R. 408.

(*o*) 53 & 54 Vict. c. 5, s. 276.

(*p*) *Ibid.* s. 277.

(*q*) *Ibid.* s. 280.

(*r*) *Ibid.* s. 282. Similar provisions were contained in the previous Lunacy Act.

MANDAMUS. A writ of mandamus is a command issuing in the King's name from the King's Bench Division of the High Court of Justice, and directed to any person, corporation, or inferior Court, requiring them to do some particular thing therein specified which appertains to their office or duty, and which the High Court has previously determined, or at least supposes, to be consonant to right and justice (*s*).

Writs of mandamus have been issued from very early times to the Ecclesiastical Courts, *e.g.*, to compel them to absolve an excommunicated person who wished to conform to the orders of the Church (*t*), to compel the Dean of Arches to hear an appeal (*u*); but a mandamus is refused where the judge has an absolute discretion (*x*).

The following ecclesiastical offices have been considered of sufficient public importance to enable the Court to interfere by mandamus:—Archdeacon, vicar, curate, canon, endowed lecturers, endowed pastors of dissenters, churchwardens, parish clerks, apparitor general of the Archbishop of Canterbury, sexton, at any rate where it is an office for life. A mandamus to restore has been refused in the case of cathedral appointments where the bishop is visitor (*q. v.*), or a person who has a remedy by *quare impedit* (*q. v.*), or a deputy of a parish clerk (*y*).

It is said that a mandamus has never been granted to deprive of an office (*z*); in such cases the remedy is by *quo warranto* (*q. v.*). (*And see* PROHIBITION.)

MANSE. An old term for the minister's residence, said to comprise both house and glebe. It is almost obsolete in England, but is still the usual term in Scotland.

(*s*) 3 Bla. Com. 110.

(*t*) See *St. Balaunce Case* (1620), 1 Palmer 50, and other cases cit. Shortt on Informations, &c. p. 296.

(*u*) *R.* v. *Dodson* (1857), 7 E. & B. 315.

(*x*) See *Reg.* v. *London* (*Bishop*), [1899] 24 Q. B. D. 213; *Rex* v. *Canterbury* (*Archbishop*), [1902] 2 K. B. 503.

(*y*) See cases collected in Shortt, pp. 283 *et seq.*

(*z*) Shortt, p. 289; and as to procedure, see *ibid.* pp. 361 *et seq.*, and R. S. C.

MARRIAGE is a voluntary union for life (or until divorce) of one man and one woman to the exclusion of all others (*a*). Our law considers marriage in no other light than as a civil contract (*b*); but the Church has always looked upon it as something more. About the time of King John it began to treat marriage as a sacrament, and afterwards from time to time altered the forms which it declared necessary to constitute a regular marriage such as it would entirely approve. From the earliest times, however, in Roman Catholic countries up to the Council of Trent, in England up to the year 1753, and in Scotland up to the present day, irregular and clandestine marriages before witnesses by mere consent of the parties *per verba de præsenti* (*i.e.*, by words in the present tense) established between the parties indissolubly the relation of husband and wife (*c*).

In 1753 Lord Hardwicke's Act was passed, by which it was enacted that all marriages (except those of Quakers and Jews) celebrated otherwise than in a church and according to the rites of the Church of England should be absolutely null and void. This had a good effect in stopping Fleet marriages and other similar abuses, but bore rather severely upon all who dissented from Church doctrines, whether Roman Catholics or Protestants. Such, however, continued to be the law up to the passing of the Marriage Act, 1836, by which provisions were made for civil marriages at a "registry office," and for legalizing all marriages in duly registered dissenting places of worship if celebrated in the presence of a civil official, called a registrar of marriages; and now, by the Marriage Act, 1898, the attendance of the registrar may, under certain conditions, be dispensed with (*d*). Many Pro-

(*a*) See *Hyde* v. *Hyde* (1866), L. R. 1 P. & D. 133.

(*b*) 1 Bla. Com. 439.

(*c*) The practice in England seems to have been stricter than in other European countries, and for certain purposes connected with property the intervention of a minister was possibly necessary. But as a matter of history there is considerable doubt. See the whole subject elaborately discussed in *Reg.* v. *Millis* (1844), 10 Cl. & Fin., in which the law lords were equally divided; and the judgment in *Beamish* v. *Beamish* (1861), 9 H. of L. C. 274.

(*d*) 61 & 62 Vict. c. 58. See *post*.

testant dissenters, however, still have their marriages celebrated by the Established Church, which, it is stated, performs about seventy per cent. of English marriages.

The parties to a marriage must be willing and able to contract (*i.e.*, to marry), and must observe certain forms; but, unlike an ordinary civil contract, it cannot be rescinded by the parties at pleasure. Marriage has therefore been well said to be something more than a contract, either religious or civil—to be an institution (*e*).

The duties of ministers and registrars are practically confined to enforcing the observance of the proper legal forms and ceremonies, but at the same time they are liable to punishment for performing the ceremony, knowing that the parties or one of them is either unable or unwilling to enter into the contract, and it is therefore useful to give a short *résumé* of the law as to the various disabilities and incapacities.

Prohibited Degrees. Marriages within the prohibited degrees which have been celebrated since 31st August, 1835, are absolutely void to all intents and purposes whatsoever (*f*). Before that date they were only voidable. A list of these, known as Archbishop Parker's Table, is appended to the Prayer Book and exhibited in every church (*g*). The fact that one of the parties is illegitimate or of the half blood does not affect the degree of relationship for the purposes of marriage (*h*). Formerly they forbade a man to marry his deceased wife's sister, but this is now lawful (*h*). A woman may not marry her deceased husband's brother, nor a man

(*e*) *Per* Lord Penzance in *Hyde* v. *Hyde*, *ubi sup.*

(*f*) 5 & 6 Will. 4, c. 54, s. 2; *Andrews* v. *Ross* (1888), 14 P. D. 15.

(*g*) Leviticus, cc. 18, 20, 21; 25 Hen. 8, c. 21; 28 Hen. 8, c. 7, s. 7; 28 Hen. 8, c. 16, s. 2; 32 Hen. 8, c. 38; Can. 99; *Reg.* v. *Chadwick* (1847), 11 Q. B. 173; 2 Cox, C. C. 381. See Revd. St. i. 372: 5 & 6 Will. 4, c. 54.

(*h*) 7 Edw. 7, c. 47; *Rex* v. *Dibdin*, C. A., [1910] P. 57; *Re Whitfield*, [1911] 1 Ch. 310; *Reg.* v. *Chadwick*, *ubi sup.*; *Reg.* v. *Brighton* (1861), 1 Best & Smith, 447. Marriage with deceased wife's sister has long been lawful in the Australian Colonies and Denmark. The Chief Rabbi, who must be taken to be the greatest authority on such a point, says such a marriage is permissible by the Mosaic Law. See Hammick, p. 39.

his deceased wife's niece, nor his deceased wife's mother's sister. First cousins, and *à fortiori* second cousins, may intermarry; two brothers may marry two sisters; and father and son, mother and daughter.

The following rules have been laid down—(1) that the degrees which are laid down as to men will hold equally as to women in the same proximity; (2) that the husband and wife being but one flesh, he who is related to the one by consanguinity is related to the other by affinity in the same degree (*i*). The affinity, however, which bars marriage is only that of the direct kind, or that which subsists between the husband and the wife's blood relations, or between the wife and the husband's blood relations (*k*).

Corporal Infirmity, or natural inability to perform the essential duties, is a good ground for nullifying a marriage. A judgment of the Divorce Division is necessary, and it must be obtained during the lifetime of the parties. Generally, it is not granted until after three years' cohabitation.

Prior Marriage—or rather, having another husband or wife living—in which case, besides the penalties consequent upon it as a felony (bigamy), the second marriage is void (*l*). Such prior marriage must be a valid one, either according to English or foreign law. As to what is a valid foreign marriage—the general rule is, that a marriage valid where celebrated, even in a heathen country, if civilized, *e.g.*, Japan, is good everywhere: except marriages involving polygamy and incest *jure gentium* (*m*). But this must be taken to apply subject to the law of domicil, for if (*e.g.*) a domiciled Englishman formerly went to Denmark for the purpose of there marrying his deceased wife's sister, the marriage was not valid in England on his return (*n*). In order to have rendered the marriage good in England, a

(*i*) See Gib. 412.
(*k*) Hammick, p. 31.
(*l*) 2 Ste. Com. 258.
(*m*) *Hyde* v. *Hyde* (1866), L. R. 1 P. & D. 133; *Re Bethell* (1888), 38 Ch. D. 237; *Brinkley* v. *Att.-Gen.* (1890), 15 P. D. 76.
(*n*) *Brook* v. *Brook* (1857), 3 Sm. & Gif. 481.

Danish domicil must have been previously acquired by both parties.

The question also frequently arises, whether a divorce is a valid one. In the English Court a decree *absolute* must have been pronounced, and the time for appealing against such decree elapsed, or the appeal disposed of, before the parties can legally marry again (*o*).

If the decree was obtained in a foreign Court, that is, out of England, it does not necessarily follow that the divorce is recognized in England. The question is complicated and depends largely on the law of domicil. Thus, it has been held by the House of Lords that the English Courts will recognize as valid the decision of a competent foreign Christian tribunal dissolving the marriage solemnized in England between a domiciled native in the country where such tribunal has jurisdiction and an Englishwoman, although the dissolution may have been for a cause which would not have been sufficient to obtain a divorce in England (*p*). But where the husband is a domiciled Englishman at the date of his marriage, two cases arise: (1) where he retains his English domicil, in which case no foreign tribunal can dissolve the marriage for ground on which it was not liable to be dissolved in England (*q*); (2) where he *bonâ fide* changes his domicil—this case has not been formally decided, but it would seem that the decision of the foreign tribunal would be accepted (*r*).

When a husband or wife has not been heard of for seven years, he or she may be presumed to be dead, and the survivor may marry again without being guilty of the offence of bigamy; but if the first husband or wife proves to be living, the second marriage is absolutely void.

Want of Age. A marriage by a child under seven is

(*o*) Jud. Act, 1881, s. 9; 31 & 32 Vict. c. 77; *Cleaver* v. *Cleaver* (1884), L. R. 9 App. C. 631.

(*p*) *Harvey* v. *Farnie* (1882), 8 App. C. 43.

(*q*) *Lolley's Case* (1812), Russ. & Ry. C. C. 237; *Shaw* v. *Att.-Gen.* (1870), L. R. 2 P. & D. 156.

(*r*) See *Shaw* v. *Att.-Gen.*, *ubi sup.*; and Eversley on Domestic Relations, p. 508; *Hunt* v. *Hunt*, [1897] 2 Q. B. 304.

utterly void; by a boy under fourteen or a girl under twelve is voidable by either party on the child attaining the age of consent (*i.e.*, fourteen and twelve). No re-marriage is necessary. The above rules relate to the actual marriage contract. No one under the age of twenty-one can make a binding "promise to marry." Formerly the consent of guardians to the marriage of infants (under twenty-one) was necessary to the validity of the marriage, but such is not the case now, though it ought to be obtained (*s*). All the property accruing from such a marriage, when brought about by false swearing or fraud, is liable to be forfeited for the benefit of the innocent party or the issue of the marriage (*t*).

Since 1823 no minister has been punishable by ecclesiastical censures for solemnizing a marriage between minors, unless he has *notice* of the dissent of the parent or guardian (*u*). As the statute is silent as to the kind of notice, it is to be presumed that either actual or constructive notice is sufficient. A clergyman ought not, therefore, to solemnize the marriage without inquiry, if any rumour of the guardian's dissent has reached him. Knowledge of the fact that one of the parties is a ward in Chancery would probably lead to the clergyman's committal for contempt of Court (*x*).

Want of Reason. The marriages of lunatics so found by inquisition were formerly totally void (*y*), and they may now be nullified as a matter of course. Persons knowingly assisting at the marriage of a lunatic so found by inquisition are guilty of contempt of Court (*z*). Insanity and idiocy generally (except during a lucid interval), also being drunk and consequently incapable at the time of the ceremony, would invalidate the marriage, and enable a decree of nullity to be obtained (*a*).

(*s*) 4 Geo. 4, c. 76, s. 16; *R.* v. *Birmingham* (1828), 8 B. & C. 29, 35.

(*t*) 4 Geo. 4, c. 76, s. 23.

(*u*) 4 Geo. 4, c. 76, s. 8. *And see* BANNS.

(*x*) 7 Ves. 419.

(*y*) 15 Geo. 2, c. 30, now repealed.

(*z*) *Per* Butt, J., *Scott* v. *Sebright* (1886), 12 P. D. 31. See also *Cooper* v. *Crane*, [1891] P. 369.

(*a*) This, of course, depends on the *degree* of insanity. See *Durham* v. *Durham* (1885), 10 P. D. 80; and Pope on Lunacy, 2nd ed., by Boome and Fowke.

A deaf and dumb person is capable of contracting matrimony by signs.

Force or Fraud. Marriages may be rendered void if the consent of either party is obtained by fraud or coercion; but such a case, as a general rule, could hardly escape the notice of the clergyman or registrar.

In a recent case, in which a marriage was declared null, the judge said: "On the evidence, I have come to a clear conclusion. It is that long before the ceremony was gone through the feelings of this young lady towards the respondent were such that of her free and unconstrained will she never would have married him—that she had been reduced by mental and bodily suffering to a state in which she was incapable of offering resistance to coercion and threats, which, in her normal condition, she would have treated with the contempt she must have felt for the man who made use of them, and that therefore there never was any such consent on her part as the law requires for the making of a contract of marriage" (*b*).

Misrepresentation as to means, position, &c., is not sufficient.

Error, e.g., marrying the wrong person, is also ground for a decree of nullity.

Form of Marriage. This depends on whether the marriage is to be by a Church of England minister (bishop, priest, or deacon), by the registering minister of Quakers, Jews or Dissenters, or by the civil registrar.

In a Church marriage the forms required by statute to be observed may be divided into two classes:—(1) *Essential* forms, neglect of which renders the marriage void; (2) *Directory* forms, neglect of which does not invalidate the marriage, but renders the minister liable to punishment. (1) The

(*b*) *Per* Butt, J., *Scott* v. *Sebright* (1886), 12 P. D. 31. See also *Cooper* v. *Crane*, [1891] P. 369; *Ford* v. *Steer*, [1896] P. 1.

marriage is null and void to all purposes (i) if a person shall knowingly and wilfully marry without either due publication of banns, registrar's certificate, or a licence; (ii) if the marriage is celebrated (unless by special licence) in a place other than a church or chapel (*c*), wherein banns may be lawfully published; or (iii) if *both* parties consent to or acquiesce in the solemnization of their marriage by a person not in (episcopal) holy orders (*d*). (2) The statutes also *direct* that the marriage shall take place (iv) between the hours of 8 a.m. and 3 p.m. (*e*), (v) in the presence of two witnesses in addition to the minister, and (vi) that all the rules and forms prescribed by the rubric (except where altered by statute) shall be observed. As to these requirements, it has been held that (v) is directory only, and that where there is only one witness present instead of two the marriage is *not* thereby invalidated (*f*); and it would seem that the other two requirements (iv) and (vi) are also *directory* only. The *essential* of a marriage at common law is the mutual expression of consent, and it would seem that this may be (so far as creating a valid marriage is concerned) in any form of words (*g*). Consequently, if capable persons complying with (i), (ii), and (iii) state at any hour of the day their willingness to take each other for man and wife, this would seem to be a valid marriage. The duty of the clergyman, however, is to see that *all* the requirements of the Acts are carried out (*h*). He ought, therefore, to read the whole of the Marriage Service (without any omissions), and begin and finish it within the proper hours, in the presence of the proper number of witnesses. If he fails in any of these matters he is liable to a prosecution for felony. Of course, such a prosecution would never be instituted in

(*c*) A vestry (*q. v.*) is *primâ facie* part of the church; and as to churches under repair, &c., *see* BANNS; and as to marriage on board ship, *Culling* v. *Culling*, [1896] P. 116.

(*d*) 4 Geo. 4, c. 76, s. 22.

(*e*) 4 Geo. 4, c. 76, s. 21; 49 & 50 Vict. c. 14. Before 1886 the time was 8 a.m. to 12 noon.

(*f*) *Wing* v. *Taylor* (1861), 30 L. J. P. & M. 258, 263.

(*g*) Compare form in Church Service and the registry form given *post*, and forms in Marriage Act, 1898.

(*h*) 9 H. L. C. 329.

the case of a trifling infringement of the directory rules, *e.g.*, allowing the service to overlap the proper hours, &c.

If the parties are deceived by a person pretending himself to be in episcopal holy orders, as in the recent *Ellis Case*, any doubt as to the validity of the marriage will be removed, if necessary, by Act of Parliament (*i*). The parties cannot be expected to inquire into such matters. There is always a strong presumption in law that a marriage is legal, particularly after the lapse of a great length of time; and this presumption must be met by strong, distinct, and satisfactory disproof (*k*).

If the marriage is by banns, the clergyman must satisfy himself that the banns have been duly published. The certificate is usually produced. But if a licence in due form is brought to him, all he has to do is to assume its regularity and perform the ceremony, subject to any impediment transpiring (*l*). If, however, one of the parties is a divorced person whose former marriage has been dissolved on the ground of his or her adultery, a clergyman is not bound to perform the ceremony, but must allow the use of his church, so that any other Church minister entitled to officiate within the diocese may solemnize the marriage (*m*). Also, no minister of religion is *bound* to marry on a registrar's certificate (*n*); but if in any other cases he refuses, *e.g.*, for non-payment of the fee (*o*), or because one of the parties is not willing to be confirmed (*p*), he would probably be liable to punishment in the Ecclesiastical Court, if not to criminal indictment. It is contended, and with some justice, that the individual clergy (not the Church) should have greater powers of refusing to marry given them.

The marriage ceremony (as some think) should be begun in the *body of the church* and finished at the Lord's Table;

(*i*) See 51 & 52 Vict. c. 28.
(*k*) Stephens, P. B. 1504; and see 19 & 20 Vict. c. 119, s. 17.
(*l*) *Tuckniss* v. *Alexander* (1863), 32 L. J. Ch. 794.
(*m*) 20 & 21 Vict. c. 85, ss. 57, 58.
(*n*) 19 & 20 Vict c. 119, s. 11.
(*o*) Lynd. 278. But see Burn.
(*p*) *Reg.* v. *Moorhouse James* (1850), 4 Cox, C. C. 217.

the removal from the body of the church taking place during the psalm, which is to be sung "going to the Lord's Table;" but by custom the ceremony is usually begun and finished in the chancel, the minister standing within the Communion rails (*q*).

For the words "priest" and "minister" in the rubric "person in holy orders" may be read, and the rubric ought to be altered accordingly. A deacon performing the ceremony is bound to go through the whole service (*r*).

An impediment may be alleged on the day of the marriage, and if supported by giving proper security to the parties for damages, then the solemnization must be deferred until such time as the truth can be tried (*s*). The clergy in mediæval times were not allowed to contract matrimony. This restriction was removed at the Reformation (*t*). But if a clergyman marries his deceased wife's sister (as is now legal), he may incur ecclesiastical censures (*u*).

A clergyman cannot perform his own marriage ceremony: if he does, it is null and void (*u*). It seems that from the times of the primitive Church there has never been any distinction between the marriage of a clergyman and a layman (*v*).

If the marriage is performed by the registrar, it must be in pursuance of the superintendent registrar's certificate (*q. v.*) corresponding to banns, or his licence (*q. v.*) corresponding to the "common" ecclesiastical licence. The marriage must take place in a registered building according to such form and ceremony as the parties may see fit to adopt, with open doors, between the hours of 8 a.m. and 3 p.m. (*x*), in the presence of some registrar of the district in which such registered building is situate, and of two or more credible witnesses; and in some part of the ceremony, and in the presence of such registrar and witnesses, each of the parties

(*q*) Rubric; and see Wheatley, P. B.
(*r*) See authorities cited under DEACON.
(*s*) Rubric.
(*t*) 5 & 6 Edw. 6, c. 12.
(*u*) 7 Edw. 7, c. 47, s. 4.
(*v*) *Beamish* v. *B.* (1861), 9 H. of L. Cases, 274.
(*x*) 49 & 50 Vict. c. 14.

shall declare (in England in English, and in Wales in Welsh) that they know of no impediment, and each of the parties shall say to the other, "I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)" (*y*). In the case of Papists and other dissenters, the legal form was generally gone through in the vestry of the church or chapel after the religious ceremony; but in future the minister will be in most cases "a duly authorized person" under the Marriage Act, 1898, and will act as registrar, and the legal form will be included in the religious service (*z*). A marriage may be celebrated *apart from any religious ceremony*, at the office of the superintendent registrar or some registrar of the district under similar conditions to the above (*a*), and, if desired, a religious ceremony may be subsequently added either in a Church of England or dissenting place of worship; but such marriage must not be entered in the register, as it does not constitute the legal ceremony (*b*).

A marriage by a registrar is null and void if any persons shall knowingly and wilfully intermarry in a place other than that specified in the notice and certificate (*c*), or without due notice to the superintendent registrar, or without certificate duly issued, or licence, or in the absence of the registrar (where his presence is required) (*d*). Many marriages void under these Acts have been subsequently legalized by Act of Parliament (*e*).

Felony. As before stated, a Church of England minister who knowingly and willingly solemnizes a marriage without the Acts being complied with, is guilty of *felony*. So, also, is a person who, pretending to be in episcopal holy orders, solemnizes a marriage according to the office of the Church (*f*); and in order to convict such a person, it is only

(*y*) 6 & 7 Will. 4, c. 85, s. 20.
(*z*) 61 & 62 Vict. c. 58.
(*a*) 6 & 7 Will. 4, c. 85, s. 21.
(*b*) 19 & 20 Vict. c. 119, s. 12.
(*c*) But see *Stallwood* v. *Tredger* (1815), 2 Ph. 287.
(*d*) 6 & 7 Will. 4, c. 85, s. 42.
(*e*) See Greek Marriages Act, 1884, and stat. cited 2 Ste. Com. 249; and 52 & 53 Vict. c. 38.
(*f*) 4 Geo. 4, c. 76, s. 21.

necessary to show that his letters of orders are spurious *to his knowledge*. The prosecution is not bound to show that he has no other valid orders, and the fact that the bishop has licensed or instituted him, on the strength of such spurious letters of orders, is no defence (*g*).

As to persons other than clergymen of the Church of England:—Any person who knowingly and wilfully solemnizes marriage in any other place than that specified in a registrar's certificate and notice, or in the absence of a registrar, or (except by licence) within twenty-one days after entry of the notice, or, if the marriage is by licence, within seven days after such entry, or (in any case) after three calendar months from such entry, is guilty of *felony*.

Registration. All marriages are required by law to be registered, the registering officers being clergymen of the Church of England, dissenting ministers and others authorized under the Marriage Act, 1898, the registrar under 6 & 7 Will. 4, c. 85, the registering officer of the Quakers, and secretaries of Jewish synagogues (*h*).

Certificate of marriage costs 3*s*. 7*d*. (*See* REGISTERS.)

Fees. The fees for a Church marriage depend upon custom. The usual fees are:—If after banns, 12*s*. (minister 6*s*. 8*d*.; clerk 3*s*. 4*d*.; sexton 2*s*.); if by licence, 17*s*. 6*d*. (minister 10*s*.; clerk 5*s*.; sexton 2*s*. 6*d*.). It has, however, been held that a marriage fee of 13*s*. (minister 10*s*.; clerk 3*s*.) could not have had a legal origin by custom, on account of its large amount, and is unreasonable even now (*i*).

The fee for a registry marriage is only 5*s*., or if by licence 10*s*. (*k*).

Where the parties to a marriage are both Quakers, or both

(*g*) *Reg.* v. *Ellis* (1889), 16 Cox, C. C. 469.

(*h*) 6 & 7 Will. 4, c. 86, s. 31; and 19 & 20 Vict. c. 119, s. 22. *See* REGISTERS.

(*i*) *Bryant* v. *Foot* (1868), L. R. 3 Q. B. 497.

(*k*) 6 & 7 Will. 4, c. 85, s. 22; and see 61 & 62 Vict. c. 58, s. 17.

Jews, the above rules do not apply, and the marriages are solemnized according to their respective usages (*l*).

There are also special Acts as to consular, foreign, naval and royal marriages.

MEMBER OF THE CHURCH. (*See* PUBLIC WORSHIP REGULATION ACT.)

MINISTER at one time applied only to deacons, but is now the most comprehensive ecclesiastical title. In the Prayer Book it means "officiating clergyman," whether bishop, priest, or deacon (*m*). It is also the word usually employed by the Church of Scotland and by Protestant Dissenters to denote a clergyman of their communions, and in this sense is constantly used in the statute law (*n*). In the statute 13 Eliz. c. 12, and Canons 31 and 32, the word "minister" evidently means "priest" of the Church of England.

When a new district is formed under the New Parishes Acts, the person nominated to perform pastoral duties in the district has the legal style or title of "minister," but when the district becomes a parish the "minister" becomes the "vicar" (*o*).

MINISTRATION. There is some little doubt whether the legal meaning of "ministration" is confined to those duties which a minister is primarily bound to do, or whether it extends to certain of those duties which a layman may also perform. The point is of importance, as a clergyman is only bound to wear the surplice "during his ministrations." Preaching is not a "ministration" (*p*).

MINES. (*See* INCUMBENT.)

(*l*) As to these, see Hammick, 152—165.

(*m*) *See* ABSOLUTION; BISHOP; and *Read* v. *Bishop of Lincoln* (1889), 14 P. D. 148.

(*n*) *E.g.*, 51 & 52 Vict. c. 41, s. 2, sub-s. (2) (a); 52 & 53 Vict. c. 38, s. 1; and *Keet* v. *Smith* (1875), 1 P. D. 73.

(*o*) *See* PARISH.

(*p*) *See* VESTMENTS; BLACK GOWN; ALMS.

MINOR ORDERS are not conferred in the Church of England. Some bishops confer the title of *lector*, reader, and *diocesan reader*, but these are not legal offices. In the Church of Rome there are four minor orders—acolyte, exorcist, reader, and porter; the office of sub-deacon being by them now considered as one of the greater or holy orders.

MITRE. The bishop's head-dress in the Church of Rome. It was not ordered by the Prayer Book of 1549, or any subsequent ordinal or Prayer Book, and upon the principles of all the Privy Council decisions is illegal (*q*).

MIXED CHALICE. In *Hebbert* v. *Purchas*, the Privy Council decided that it is illegal to administer wine mixed with water, instead of wine only, to the communicants at the Lord's Supper, whether the water be mingled with the wine before or during the Communion Service (*r*). In *Read* v. *Lincoln*, the Privy Council held that the use of a cup mixed before the Communion Service is legal (*s*). It would seem that *Hebbert* v. *Purchas* is the binding authority (*t*). Where the mixing takes place in sight of the people so as to form a further ceremony in connection with, and forming part of the ceremonies of public worship, *e.g.*, immediately before the Communion Service, such mixing forms an additional and unlawful ceremony (*u*). The addition of water to the wine during the Lord's Supper is of great antiquity; it was prescribed in the Prayer Book of 1549, expunged from all later books, and became illegal. As to a "ceremonial" being illegal, *see* the *Mackonochie* and *Lincoln* cases. In fact, all wine is a mixture, of which a very large proportion is water. The symbolic meaning of the mixed chalice is very varied and doubtful (*v*).

(*q*) *See* PASTORAL STAFF; VESTMENTS.

(*r*) *Hebbert* v. *Purchas* (1871), 3 P. C. 605, 653.

(*s*) *Read* v. *Bishop of Lincoln*, [1892] A. C. 644.

(*t*) *See* APPEAL.

(*u*) *Martin* v. *Mackonochie* (1868), L. R. 2 P. C. 392. *See* PROCESSIONS, and *Elphinstone* v. *Purchas* (1870), 3 A. & E. 67.

(*v*) See L. R. [1891] P. 23.

MONASTERIES. (*See* RELIGIOUS HOUSES; VICAR.)

MONITION, a direction by an ecclesiastical judge to do a certain act. Under the Pluralities Acts it must be under the hand and seal of the bishop, and must be served either personally or in manner directed by the Acts (*x*).

MONUMENTS, tombstones, and coat armour are legal decorations of a church. When once erected (for which a faculty is necessary) they may be repaired without any further consent of ordinary or incumbent, and the persons setting them up have an action for their defacement or removal (*y*).

A gift for the *perpetual* repair of a tomb, if in a church, is a good charitable gift, but not so if it is in a churchyard or elsewhere than in a church. The reason for the distinction is not quite clear where the tomb is in a public place like a churchyard, but the difficulty may be got over by giving property to some charitable society for their charitable purposes on condition that the tomb shall be perpetually kept in repair, and directing that if the tomb is not repaired the property shall go over to another charity. The gift over will be held valid, and the first-named charity will be bound to repair the tomb in perpetuity or lose their gift (*z*).

The incumbent must not allow inscriptions on tombstones inconsistent with Church doctrines. "Pray for the soul of ———" was in one case held to be allowable, but it may be doubted whether this is good law (*a*). Verses from the Apocrypha are permissible (*a*). A faculty may be obtained for a monument to a non-parishioner (*b*).

(*x*) 1 & 2 Vict. c. 106, s. 112; am. 48 & 49 Vict. c. 54. *And see* PUBLIC WORSHIP REGULATION ACT, and INHIBITION.

(*y*) 3 Inst. 202; *Ritchings* v. *Cordingley* (1868), L. R. 3 A. & E. 113; *Spooner* v. *Brewster* (1825), 3 Bing. 136. *And see* SACRILEGE. As to removal under statutes, *see* CHURCHYARD; PARISH.

(*z*) *Re Tyler*, [1891] 3 Ch. 252.

(*a*) *Breeks* v. *Wolfrey*. *See* ARTICLES. Since the above was written faculties have been refused in *Egerton* v. *All, &c.*, [1894] P. 15; *Stead* v. *Pearson*, [1903] P. 66.

(*b*) *Bardin* v. *Calcott* (1789), 1 Hagg. Cons. Rep. 17.

If the church, churchyard, or glebe contains any ancient monuments of public interest, the owner may, under the provisions of the Ancient Monuments Protection Acts, 1882 to 1910, by deed under his hand constitute the Commissioners of Works the guardians of such monuments, and thenceforth they will have to maintain them (which includes fencing, repairing, cleansing, covering in, &c.). Subject to such guardianship, the owner retains all his original interest in the monuments. The commissioners have also power to purchase (*c*).

Fees. By custom, fees for erecting monuments and tombstones may be charged, and it seems likely that in most cases the incumbent would be allowed to charge a reasonable fee (*d*).

MORTGAGE. (*See* INCUMBENT.)

MORTMAIN is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal (*e*), but the term is generally applied to the falling of land into the "dead hand" of the Church. The history of the long struggle between Church and State on this subject cannot be gone into here; suffice it to say that the legislature at last obtained a decisive victory (*e*). By the Mortmain Act, 1736 (*f*), the power (until that time possessed) of devising land *by will* to charitable purposes was absolutely destroyed (*g*). This Act and various amending Acts were repealed by the Mortmain and Charitable Uses Act, 1888, but practically the then existing law was re-enacted.

A considerable change has, however, been effected by the Mortmain and Charitable Uses Act, 1891, which enacts that (as to wills of testators dying after the 5th August, 1891) land may be assured *by will* to or for the benefit of any

(*c*) 45 & 46 Vict. c. 73; and see list of monuments in Schedule, and 55 & 56 Vict. c. 46; 10 Edw. 7, c. 3.
(*d*) *See* CHURCHYARD.
(*e*) 1 Bla. Com. 268 *et seq.*
(*f*) 9 Geo. 2, c. 36.
(*g*) See *Luckraft* v. *Pridham* (1877), 6 Ch. D. 214.

charitable use, but such land shall, notwithstanding anything in the will contained to the contrary, be *sold* within one year from the death of the testator, unless the time is extended by the High Court, or a judge at chambers, or the Charity Commissioners. And there is a corresponding provision that personal estate assured in like manner, and directed to be laid out in land, shall not be so laid out. The Court, or a judge at chambers, or the Charity Commissioners have power to sanction the retention or acquisition of such land, where it is required for actual occupation for purposes of the charity (*h*).

The effect of the Mortmain Acts, 1888 to 1892, is as follows:—

It is expressly provided that nothing shall affect the operation or validity of any charter, licence, or custom in force at the passing of the Act of 1888 (13th August, 1888) enabling land to be assured and held in mortmain (*i*). But if, after the passing of the Act, any land shall be acquired in mortmain otherwise than under a licence from the King, or under a statute for the time being in force, the land is forfeited to his Majesty, subject to the right of the mesne lord (*k*).

By Part II. of the Act of 1888, every assurance (*l*) of land, and every assurance of personal estate to be laid out in the purchase of land, *by deed*, to or for the benefit of any charitable uses, must be made in accordance with the requirements of this Act, and unless so made is void. These requirements are as follows:—(1.) The assurance must be made to take effect in possession immediately from the making thereof. (2.) It must be unconditional except in the following respects—a nominal rent and mines, minerals, and easements may be reserved; it may contain covenants or provisions as to repairs, building arrangements, and the making of streets,

(*h*) 54 & 55 Vict. c. 73, ss. 5—9.
(*i*) 51 & 52 Vict. c. 42, s. 12.
(*k*) Sects. 1—3.
(*l*) "Assurance" includes every kind of gift, conveyance, or charge by deed or will. See sect. 10 (1); and 54 & 55 Vict. c. 73, s. 4.

and a right of entry for non-payment of rent or breach of covenant, and any stipulations of a like nature for the benefit of the assuror, or any person claiming under him; but in all such provisions the same benefits must be reserved to persons claiming under the assuror as to the assuror himself. (3.) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, or any other annual payment with or without a right of re-entry. (4.) If the assurance is of land not being of copyhold or customary tenure, or is of personal estate not being stock in the public funds, it must be by deed executed in the presence of two witnesses. (5.) If the assurance is of land, or of personal estate not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least *twelve months* before the death of the assuror, including in those twelve months the days of the making of the assurance and of the death; and similarly stock in the public funds must be transferred *six* months before such death. (6.) If the assurance is of land, or of personal estate other than stock in the public funds, it must be enrolled within six months after execution in the central office of the Supreme Court of Judicature, except where charitable uses are declared by a separate instrument, in which case the separate instrument must be enrolled within six months after making the *assurance* (*m*). The High Court or the controlling officer of enrolments has power to remedy an omission to enrol in cases of ignorance or accident, and a copy may be enrolled where the original is lost. The application may be made by any trustee or other person interested in the charity (*n*). If, however, the deed is registered under the Land Transfer Act, 1875, or any amending Act, these rules as to enrolment and the presence of witnesses do not apply (*o*).

Part III. of the Act deals with *exemptions* (*p*). In the

(*m*) Sect. 4.
(*n*) Sect. 5.
(*o*) Sect. 9.

(*p*) As to the application of sect. 6 to assurances by deed to local authorities, see 55 & 56 Vict. c. 11.

case of public parks for the recreation of the public, schoolhouses for elementary (*q*) schools (including teacher's house, playground, and offices), and public museums (including libraries, reading rooms, laboratories, and necessary premises), the above rules do not apply to an assurance by deed of *land of any quantity,* or to an assurance by will of *land not exceeding* twenty acres for a public park, one acre for a schoolhouse, and two acres for a museum, or to an assurance by will of *personal estate* to be laid out in land. Provided that a will containing such an assurance, and a deed containing such an assurance, and made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before death, or be a substantial reproduction of a devise in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before death, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in case of a deed, the execution of the deed. Part II. of the Act does not apply (i) to the universities of Oxford, Cambridge, London, Durham and the Victoria University, or any of their colleges, or to Eton, Winchester, or Westminster Colleges as to foundationers, or to Keble College, Oxford, or (ii) to assurances otherwise than by will to societies for the promotion of religion, education, art, literature, science, or other like purposes, of land not exceeding two acres for the erection of buildings, or on which buildings have been erected, the assurance to be made in good faith and for full and valuable consideration. Such assurance or the trust deed may be enrolled at any time (*r*). (iii) In addition, a very complicated provision is inserted, that where by any statute now in force any provision of the Mortmain Act, 1736, or other statutes repealed by the Mortmain Act, 1888, is excluded either wholly or partially from application, or is applied

(*q*) "Elementary" school does not include any school where the scholars' payments exceed 9*d.* per week: sect. 6 (4) (ii). Sale within one year not required: 2 Edw. 7, c. 42, s. 23 (5).

(*r*) Sect. 7.

with modification, in every such case the corresponding provision of the 1888 Act is excluded or applied in like extent and manner. Hence, Queen Anne's Bounty (*s*), the Ecclesiastical Commissioners under the New Bishoprics and New Parishes Acts, &c., also numerous other corporations and companies, are wholly or partially exempt from the Act (*t*). Also Parts I. and II. do not apply to any assurance by *deed* or *will* of land to provide dwellings for the working classes, but the will must not assure more than five acres, and both deed and will must be duly enrolled within six months (*u*).

Also various provisions of the Sites for Schools Acts (*x*) are still unrepealed, under which land may, subject to certain restrictions, be given for schools; and the death of the donor within twelve months will not render the gift void. In a similar way land may be given for literary and scientific institutions (*y*), recreation grounds (*z*), places of worship and burial grounds (*a*); but most of these enactments, so far as gifts by will are concerned, are now rendered unnecessary by the above-mentioned Mortmain Act, 1891.

Land under the Mortmain Acts, 1888 and 1891, includes tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land (*b*). Various cases have decided that the *old* Mortmain Act applied to copyholds, leaseholds, principal or interest secured on mortgage of real property or chattels real, the purchase-money of land directed to be sold, liens for unpaid purchase-money, the proceeds of a partnership share in realty, and proceeds of growing crops, but that it did not apply to debentures or debenture stock of companies holding land, or to arrears of rent (*c*).

(*s*) 43 Geo. 3, c. 107.
(*t*) 51 & 52 Vict. c. 42, ss. 8, 9, 12; and see list in Chronological Index to Statutes Mortmain, 2 and 3, and Tudor, 3rd ed. pp. 432 *et seq.*
(*u*) 53 & 54 Vict. c. 16.
(*x*) 4 & 5 Vict. c. 38, and amending Acts; see Tudor.
(*y*) 17 & 18 Vict. c. 112.
(*z*) 22 Vict. c. 27.
(*a*) 36 & 37 Vict. c. 50; 45 & 46 Vict. c. 21.
(*b*) 54 & 55 Vict. c. 73, s. 3.
(*c*) See cases collected in Tudor.

Where land is already devoted to charitable uses the special provisions of the Mortmain Acts do not apply (*c*). (*See* CHARITIES.)

MORTUARY or "corse present" is not a burial fee, but is a payment in the nature of a fine or heriot made to the minister on the death of a parishioner. They are not due as of common right, but by custom only (*d*). By a statute of Henry VIII. no mortuary is payable by any person who at the time of his death hath in movable goods under the value of 10 marks (*e*), or by a married woman, child, any person not keeping house, or a wayfaring man. And no person shall pay mortuaries in more places than one, that is to say, in the places of their most dwelling and habitation, and there but one mortuary. The sum payable must not exceed 10*s*. in any case (*e*).

By special agreement mortuaries may be commuted under the Tithe Commutation Act (*f*).

NAVY CHAPLAIN. For this office it is necessary that the candidate should be (1) a clergyman of the Anglican Communion; (2) under thirty-five years of age; (3) not beneficed. Navy chaplains are examined and appointed by the Admiralty (*g*). They do not hold any naval rank, but the head chaplain is styled "Chaplain of the Fleet" (*h*). Their pay varies according to length of service from 219*l*. to 401*l*. 10*s*. per annum, and certain allowances; and when acting also as Naval Instructor they receive half as much again, and extra allowances for tuition (*i*). Their duties are to conduct daily morning prayers and Lord's Day services, administer the Holy Communion, give religious instruction, and visit the naval schools. Captains are to see

(*c*) See cases collected in Tudor.
(*d*) 2 Inst. 491.
(*e*) 21 Hen. 8, c. 6, ss. 3, 4.
(*f*) 6 & 7 Will. 4, c. 71, s. 90. *And see* TITHES.
(*g*) King's Regulations, 1906, Art. 272.
(*h*) *Ibid.* Art. 217.
(*i*) *Ibid.* Art. 1390 and App. I. As to half-pay, see App. IV.

that these duties are carried out, the chaplains being under naval discipline (*k*). When no chaplain is on board, the best arrangements practicable must be made by the captain to secure Divine Service being performed. This authorizes the service being read by a layman.

Various special forms of service to be used at sea were added to the Prayer Book in 1662.

Dissenters (whether Papist or Protestant) are not bound to attend the church services, and every facility is to be given them to worship according to their own creed (*l*). Allowances are made to dissenting ministers for their religious ministrations to seamen and marines (*m*).

OATH is an appeal to God to witness the truth of a statement. Swearing of any kind appears to be distinctly forbidden in the New Testament (*n*), and consequently some of the stricter sects of Christians, as Quakers and Moravians, refuse to take an oath. The Churches of Rome and of England consider that the prohibition extends only to vain and rash swearing, and our Church affirms that a Christian may swear when the magistrate requireth in a cause of faith and charity, so it be done according to the Prophet's teaching in justice, judgment, and truth (*o*), and various texts are relied upon to maintain this proposition (*p*).

After various Acts dealing partially with the subject (*q*), it was enacted by the Oaths Act, 1888, that every person stating either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation in all places and for all purposes where an oath is or shall be required by law; which affirmation is of the same force and effect as if he had

(*k*) 29 & 30 Vict. c. 109, ss. 1, 87; and King's Regulations, Arts. 645 *et seq.*, 703 *et seq.*

(*l*) King's Regulations, Arts. 707 *et seq.*

(*m*) *Ibid.* Art. 1408 *et seq.*

(*n*) St. Matt. v. 34; St. James, v. 12.

(*o*) Art. 39.

(*p*) St. Matt. xxvi. 63, 64; Rom. i. 9; 2 Cor. i. 23; Gal. i. 20; Rev. x. 5, 6.

(*q*) See list in Chronological Index.

taken an oath, and carries with it all the liability to punishment for perjury (*r*). And by the Interpretation Act, 1889, in every Act passed after the year 1850, the expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall in like case include affirm and declare (*s*). By the Oaths Act, 1909, the regular method of administering an oath is as follows:—The person taking the oath is to hold the New Testament, or in the case of a Jew, the Old Testament in his uplifted hand and say or repeat after the officer administering the oath the words, "I swear by Almighty God that . . . ." followed by the words of the oath prescribed by law (*t*).

The following are the oaths or declarations which clergymen have to take or make:—

(1.) *The Declaration of Assent.*

"I, A. B., do solemnly make the following declaration: I assent to the thirty-nine articles of religion, and to the book of common prayer, and of the ordering of bishops, priests, and deacons. I believe the doctrine of the Church of England, as therein set forth, to be agreeable to the word of God; and in public prayer and administration of the sacraments I will use the form in the said book prescribed, and none other, except so far as shall be ordered by lawful authority" (*u*).

(2.) *The Oath of Allegiance* which is now substituted for the old oath of allegiance and supremacy (*x*).

"I, A. B., do swear that I will be faithful and bear true allegiance to His Majesty King George, his heirs and successors, according to law. So help me God."

(*r*) 51 & 52 Vict. c. 46, s. 1; 52 & 53 Vict. c. 10, s. 7; 53 & 54 Vict. c. 7; 54 & 55 Vict. c. 50.
(*s*) 52 & 53 Vict. c. 63, s. 3.
(*t*) 9 Edw. 7, c. 39.
(*u*) 28 & 29 Vict. c. 122, s. 1 (Clerical Subscription Act, 1865). This Act does not extend to the Channel Islands or the Isle of Man.
(*x*) 31 & 32 Vict. c. 72, s. 8. *See* SUPREMACY; and 28 & 29 Vict. c. 122, s. 4.

(3.) *The Declaration against Simony.* (*See* SIMONY.)

(4.) *The stipendiary Curate's declaration.* (*See* CURATE.)

(5.) *Obedience to superiors:*—(a) Every priest and deacon affirms that he will reverently obey his ordinary and other chief ministers unto whom is committed the charge and government over him (*y*).

(b) The following is taken by every bishop—

"In the name of God. Amen. I, A. B., chosen bishop of the church and see of N., do profess and promise all due reverence and obedience to the archbishop and to the metropolitical church of N., and to their successors. So help me God, through Jesus Christ" (*z*).

The customary *Churchwarden's* oath or declaration is as follows:—

"I declare that I will truly and faithfully execute the office of a churchwarden within my parish, and according to the best of my skill and knowledge present such things and persons as to my knowledge are presentable by the laws ecclesiastical of this realm. So help me God."

The *Sidesman's*:—

"I declare that I will be assistant to the churchwardens in the execution of their office, so far as by law I am bound. So help me God."

For the Royal Coronation Oath and Accession Declaration, *see* PROTESTANT SUCCESSION.

(*y*) Ordinal 13 & 14 Car. 2, c. 4. This took the place of the old Romish oath of canonical obedience, which ran as follows:—"Ego A.B. juro quod præstabo veram et canonicam obedentiam episcopo . . . . ejusque successoribus in omnibus licitis et honestis. Sic me Deus adjuvet." Gibson, Codex, 810. Some bishops have lately taken to administer this oath in an English translation, *e.g.*, in the colonies, and it has been held by the Privy Council that it "does not mean that the clergyman will obey all the commands of the bishop against which there is no law, but that he will obey all such commands as the bishop by law is authorized to impose." *Long* v. *Capetown* (1863), 1 Moore, P. C. (N. S.) 465; Brod. & Fr. P. C. 313.

(*z*) Ordinal, 13 & 14 Car. 2, c. 4.

OFFENCES. If an offence committed by a clergyman is of a purely criminal nature he is tried by the Courts of law in the same way as a layman, and if convicted of treason or felony and sentenced to punishment, as mentioned in the Act, deprivation follows *ipso facto* (*a*). If convicted by the civil Court of a similar offence—*e.g.*, drunkenness—the Ecclesiastical Court will proceed to suspend or deprive him, without inquiring whether the judgment of the civil Court was correct. But this involves delay. It would seem that that *ipso facto* suspension, dissolvable for good cause shown, ought to accompany a conviction of any kind (*b*).

If the offence committed is of an ecclesiastical nature, the proceedings (though really criminal) are in the Ecclesiastical Courts, and on conviction *ipso facto* deprivation takes place in some cases, while in others a sentence of the Court has to be pronounced (*c*).

Offences against religion are:—Apostasy (*q. v.*), heresy (*q. v.*), reviling the ordinances of the Church, blasphemy (*q. v.*), profane swearing, conjuration or witchcraft, religious imposture, simony (*q. v.*), profanation of the Lord's Day, drunkenness, lewdness (*b*), incest (*q. v.*), and ritual and doctrinal offences.

If the minister commits any offence, it is the duty of the churchwarden to "present" him to the bishop. Ritual offences are the most likely to occur, such as:—Using illegal vestments (*q. v.*) and ritual, holding systematic confessions (*q. v.*), using illegal ornaments (*q. v.*), and omitting parts of the services (*d*). Merely creating scandal would seem not to be in itself an offence (*e*).

The Church of England teaches that the laws of the realm may punish Christian men with death for heinous and grievous offences (*f*).

(*a*) 33 & 34 Vict. c. 23, s. 2. *And see* DEPRIVATON.

(*b*) See *Borough* v. *Collins* (1890), 15 P. D. 81; and as to present procedure, the CLERGY DISCIPLINE ACT, 1892, and cases there cited.

(*c*) *See* DEPRIVATION.

(*d*) See Ecclesiastical Disorders Bill, 1911, and Royal Com. Rep. 1906.

(*e*) See cases cited under CLERGY DISCIPLINE ACT, 1892.

(*f*) Art. 37.

OFFERINGS. Offerings, oblations, and obventions are one and the same thing, though obvention is the largest word (*g*). Oblations are offerings to God and the Church, while alms are for the poor. The offertory at the Communion Service is now said to be of *alms* only (*h*). Voluntary offerings originally constituted the only revenues of the Church. In some cases offerings have become established by custom, and are recoverable at law like tithes (*q. v.*).

OPTION. (*See* ARCHBISHOP.)

ORDERS, ORDINATION. Holy Orders are of two kinds—Episcopal and non-Episcopal. When in the laws of England Holy Orders are mentioned episcopal orders are meant, though ministers of the Established Church of Scotland, and of dissenting communities in England, are, nevertheless, recognized as proper Christian ministers (*i*). In the will of a member of an episcopalian church, "holy orders" is construed to mean episcopal orders (*j*). There are three orders in the Church of England—viz., bishops, priests, and deacons (*k*). The hands of the bishop and of the priests present are imposed at the ordination of a priest, the hands of the bishop only at the ordination of a deacon, the hands of the archbishop and bishops present (three being the minimum) at the consecration of a bishop (*l*). It is unlawful and an ecclesiastical offence for an incumbent in the Church of England, not being a bishop, to ordain a priest (*m*).

A candidate for admission to the ministry of the Church of England must first of all be ordained deacon. For this it is

(*g*) Burn, 3, 36.

(*h*) *See* ALMS; and Cripps, p. 677.

(*i*) *See* APOSTOLIC SUCCESSION; MINISTER; and CLERGY.

(*j*) *Att.-Gen.* v. *Glasgow Coll.* (1846), 10 Jur. 676.

(*k*) The Greek and Roman Churches do not admit the "validity" of English orders. In the Church of Rome bishops and priests are included in one order. In nearly all Churches, episcopal and non-episcopal, orders are conferred by the apostolic practice of "laying on of hands."

(*l*) See Ordinal (statutory).

(*m*) *St. Albans* v. *Fillingham*, [1906] P. 163.

requisite that he should (1) be twenty-three years of age, or have a faculty from the Archbishop of Canterbury (*n*); (2) satisfy the bishop as to his status, moral character, intellectual abilities (*o*), and orthodoxy (*p*). In refusing to ordain the bishop has an absolute discretion. He need not give reasons, and, in fact, need not hold an ordination at all unless the supply of clergy is running short; and it is his *duty* not to hold one if there are already several unemployed clergymen in the diocese (*q*). If he does he may be liable for the maintenance of the latter (*r*). Letters testimonial from three beneficed clergymen and a certificate of baptism are usually required; (3) be provided with a Title to Holy Orders (*q. v.*), in most cases a nomination to a curacy; (4) the notice called *Si quis* (*q. v.*) must be read out in church; (5) before ordination the candidate must also make certain declarations or oaths (*q. v.*)—viz., the Declaration of Assent and the Oaths of Allegiance and possibly that of canonical obedience to the bishop. In ancient times the laity had a right of objection. This seemed to be preserved by the words of the Ordination Service addressed by the bishop to the congregation inviting any "who knoweth any impediment or notable crime" to come forth in the name of God and show what the crime or impediment is. It was decided that offences against ritual and doctrine are not impediments or notable crimes, and that to allege them in answer to the question is brawling (*s*). In 1843, Sir John Dodson (afterwards Dean of Arches) and Mr. Herbert Jenner gave an opinion to the contrary (*t*).

The proper time for an ordination is upon the Sundays

(*n*) *See* DEACON.

(*o*) *See* EXAMINATION.

(*p*) 13 Eliz. c. 12. *See* PRIEST. It would seem that acting as curate at a church where illegal practices admittedly prevail and false doctrine is preached is no bar to ordination as priest. *Kensit* v. *St. Paul's*, *ubi inf.*

(*q*) *R.* v. *Archbishop of Dublin* (1833), 1 Alcock & Napier, 244.

(*r*) Can. 33, and TITLE TO ORDERS.

(*s*) *Kensit* v. *St. Paul's*, [1905] 2 K. B. 249.

(*t*) See note (2) in [1905] 2 K. B. p. 253, and British Magazine, vol. 25, and *Record* newspaper of March 25, 1904.

immediately following the four ember weeks, but upon urgent occasions the bishop may admit deacons and priests on some other Sunday or holiday (*s*). An ordination must take place in the face of the Church (*s*), and, as a general rule, in the cathedral or parish church where the bishop resides. The Irish bishops have in some instances ordained in England, and the Archbishop of York sometimes consecrates in London; but regularly, leave ought to be obtained of the bishop within whose diocese the ordination is performed (*t*).

After the ordination a certificate known as Letters of Orders is given. This must be exhibited at the bishop's first visitation (*q. v.*), and should always be produced to the churchwarden by a clergyman officiating out of his own diocese, or in any place where he is not known.

The deacon generally proceeds to priests' orders in about a year, when a further examination is required of him, and he has again to make the declarations or oaths above-mentioned. No one can be ordained priest under twenty-four, or bishop under thirty years of age (*u*), and any ordination in contravention of this rule is void. Ordinations and consecrations also must be according to the statutory form (*x*).

Fees to diocesan officers on ordination amount to 2*l.* 7*s.*, which include the Letters of Orders.

(As to cancellation of orders, *see* CLERGY; RELINQUISHMENT.)

ORDINARY. *Judex ordinarius* (a term derived from the civil law) is a judge who has regular jurisdiction as of course and of common right in opposition to persons who are extraordinarily appointed. The term is usually applied to a bishop and chancellor, they having *ordinary* jurisdiction in

(*s*) Preface to Ordinal.
(*t*) Burn, tit. Ordination.
(*u*) See Preface to Ordinal; and 44 Geo. 3, c. 43.
(*x*) See 8 Eliz. c. 1.

ecclesiastical matters (*y*). The Crown is the supreme ordinary.

ORGAN, ORGANIST. Where there is an organ in a church or chapel of the Church of England, it is not competent to the organist to play upon it *at any time* in defiance of the directions of the minister, even though he is appointed, and his salary paid, by the vestry. If the minister acts arbitrarily the ordinary may be appealed to (*z*).

Even in the days of church rates the parish was not bound to provide or keep in repair an organ, nor to supply an organist, even though there had always been such an officer beyond the time of living memory (*a*). (*See* SINGING.)

ORNAMENTS. The term "ornaments" in ecclesiastical law is not confined, as by modern usage, to articles of decoration. It includes all the several articles used in the performance of the services and rites of the Church.

"Ornaments" under the "ornaments rubric" (other than those of the minister) must be such as are *prescribed* by the Prayer Book of 1549, and the term is, in this rubric, *confined* to these articles; for though there may be articles not expressly mentioned in the rubric, the use of which would not be restrained, they must be articles which are consistent with and subsidiary to the services, as an organ for singing, a credence table from which to take the sacramental bread and wine, cushions, hassocks, mats, &c. (*b*). This rule is, however, subject to statutory amendments subsequent to 1549. Some of the ornaments originally prescribed by the 1549 Book are now undoubtedly illegal, *e.g.*, altar, oil vessels, &c. The Lord's Table, fair linen cloths, &c. are prescribed by rubrics of later prayer books, and by canons (*c*).

(*y*) Godol. Repertorium, 23; Burn, 3, 39.

(*z*) *Wyndham* v. *Cole* (1875), 1 P. D. 130.

(*a*) *Pearce* v. *Clapham* (1795), 3 Hagg. Ecc. 10; *Reg.* v. *St. Stephen's* (1844), 14 L. J. Q. B. 34; *Reg.* v. *Liverpool*, May, 1891.

(*b*) *Westerton* v. *Liddell* (1857), 5 W. R. 471; *Martin* v. *Mackonochie* (1868), L. R. 2 P. C. 365; *Ridsdale* v. *Clifton* (1877), 2 P. D. 276.

(*c*) It may be doubted whether, as a matter of fact, 1 Eliz. c. 2, s. 25,

Omitting vestments (*q. v.*), the following are proper and legal "ornaments" of the Church:—Bible, Lord's Table with proper coverings, bread and wine, fair white linen cloth, plate or paten, cup, corporas, fair linen cloth to cover elements, pulpit, reading desk, font, alms chest, alms basin, bell, bier, prayer book, book of Homilies, banns book, registers, tables of degrees of marriage, ten commandments, chosen sentences (from holy scripture or the apostles' creed), organs, clocks, chimes, credence table, second Lord's Table in a side chapel, materials for giving light, and, in general, ordinary furniture for the church and vestry (*d*).

The following are allowable as mere decorations, but not as "ornaments":—Images and crosses (*q. v.*) (in certain positions), flowers, flower vases (*e*), painted windows (*f*), royal arms, banners, regimental colours (*g*), holly, &c. at Christmas (*h*), and monuments. Thus images, banners and crosses, must not be used ceremonially or be carried in processions.

All these articles have now to be supplied out of church funds or by voluntary subscriptions. A faculty (*q. v.*) is technically required for the erection or removal of any ornament or decoration, but faculties for tablets, brasses, &c., which do not materially affect the structure are granted without hesitation; and, if obtained, it would seem that the incumbent has no power to prevent the erection or placing of the ornament (*i*).

A list of obsolete ornaments will be found in Burn, among which may be mentioned the pastoral staff (*q. v.*) and the wedding ring, which were anciently presented to a bishop on

really requires that the popish ornaments of 1549 should serve as a guide under subsequent prayer books. *See note on* VESTMENTS.

(*d*) *See* the various titles, LORD'S TABLE, &c., and Cans. 80—84, and rubrics. They are not all "necessary," *e.g.*, organ, credence table, second table.

(*e*) *Elphinstone* v. *Purchas* (1870), 3 A. & E. 106 (Arches), disagreeing with Bishop of Exeter's judgment to contrary (1847); *Re Parks Smith*, 2 Stephen's Ecc. Law, 1083.

(*f*) See Tristram Cons. J. 177.

(*g*) *Re St. Margaret's*, [1905] P. 286; *Vincent* v. *Eyton*, [1897] P. 1.

(*h*) See note (*e*), *ante*.

(*i*) *See* FACULTY.

his consecration. The latter was in token that the bishop (*q. v.*) was wedded to his see.

PARISH. In the ecclesiastical sense, a parish is that circuit of ground which is committed to the charge of one parson or vicar, or other minister having cure of souls therein (*k*), but the word often means the ancient ecclesiastical parish (*l*). The expression "parish" in every Act of Parliament passed after the year 1866 means, unless the contrary intention appears, a place (in England or Wales) for which a separate poor rate is or can be made, and for which a separate overseer is or can be appointed (*m*).

In the early ages of Christianity parish and diocese meant the same thing (*n*), and the sub-division of dioceses into what are now known as parishes in this country is not supposed to have taken place much earlier than the time of King Edgar (A.D. 970).

The boundaries of parishes were, no doubt, originally ascertained by those of a manor or manors (*k*). They are still defined by "beating" in Rogation Week, and if this is done only once in three years the expenses may be paid out of the poor rate (*o*), as also the expense of setting up and keeping in repair the boundary stones. On perambulating the boundaries private property may be entered, and obstructions that might prevent this may be removed (*p*). Parish boundaries may be altered from time to time (*q*).

Some pieces of land, for various reasons—such as being originally royal palaces, religious houses, &c.—have always been *extra-parochial*, and their tithes are payable to the sovereign by immemorial custom (*r*).

(*k*) 1 Bla. Com. 112; and see Bishoprics Act, 1878, ss. 10 and 14.
(*l*) See *Re Sandbach*, [1901] 2 Ch. 317.
(*m*) 52 & 53 Vict. c. 63, s. 5.
(*n*) Com. Dig. tit. Parish.
(*o*) 7 & 8 Vict. c. 101, s. 60.
(*p*) *Taylor* v. *Devey* (1837), 7 Ad. & E. 415.
(*q*) 3 & 4 Vict. c. 60, s. 6; 32 & 33 Vict. c. 94, s. 1; 47 & 48 Vict. c. 65, s. 3.
(*r*) 1 Bla. Com. 114; Ste. Com. i. 119, ii. 560; and for list of such places, see Population Abstract of 1831.

Division. A parish may be divided into two or more parishes for ecclesiastical purposes, or into ecclesiastical districts. The provisions on this subject are many and complicated, and are contained in statutes known as the Church Building Acts, 1818—1884 (*s*), and the New Parishes (or Peel) Acts, 1843, 1844, 1856, 1869, and 1884. These Acts, which do not extend to the Isle of Man (*t*), were originally carried into effect by the "Church Building Commissioners," whose powers were, in the year 1856, transferred to the Ecclesiastical Commissioners (*q. v.*). The difference in principle between the Church Building and New Parishes Acts seems to be, that under the former the church is first built and then the parish divided; while under the latter the new parish is formed first and a minister set over it, leaving the church to be built afterwards. The procedure under the New Parishes Acts is that generally preferred (*u*). A division of a parish can only be made with the consent of, or (in certain cases) upon compensation to, the patron and incumbent. The consent of the bishop is also necessary (*x*).

The *procedure* under the New Parishes Acts is as follows:—A scheme is prepared which must be laid before the incumbent and patron for remarks and objections (*y*). It must provide for the nomination of a minister to the new district, and must secure to him a permanent income of not less than 100*l.* (*z*) per annum, unless there is reason to expect an adequate maintenance from other sources (*a*). After the district is constituted, and before it becomes a "new parish," the "minister" must be nominated and licensed thereto, with power to perform all pastoral duties specified in his licence. Such minister is styled "The minister of the district of ———;" is not removable by the incumbent, and is, in all respects, subject to his bishop and archdeacon. He is

(*s*) For list, see schedule to 47 & 48 Vict. c. 65.
(*t*) 60 & 61 Vict. c 33.
(*u*) See Trower's Church Building Acts, and 2 Ste. Com. 759 *et seq.*
(*x*) 19 & 20 Vict. c. 104, ss. 18, 25; 32 & 33 Vict. c. 94, s. 10.
(*y*) 6 & 7 Vict. c. 37, s. 9.
(*z*) *Ibid.*, s. 9; 31 & 32 Vict. c. 117.
(*a*) 19 & 20 Vict. c. 104, s. 3.

a body politic and corporate with perpetual succession, and may hold endowments both of land and personalty (*b*). The bishop may also, at any time after the district is constituted, license a temporary place of worship (*c*). When a church or chapel has been built or purchased with the approval of the Commissioners, under their hand and seal, or when the scheme is ratified by Order in Council (*d*), the district becomes a new parish for ecclesiastical purposes (of which burial is one (*e*)), and it thereupon becomes lawful to solemnize marriages, baptisms, churchings, and burials therein. The minister having been first duly licensed by the bishop to such church, thereupon, *ipso facto*, becomes the vicar thereof, and the endowment must be permanently raised to 150*l*. per annum (*f*) (unless there is reason to expect an adequate maintenance from other sources (*g*)), and the new church becomes a vicarage, and is deemed to be a benefice with cure of souls to all intents and purposes (*h*). Two churchwardens (*q. v.*) are to be elected, but they are not to be charged with any duties as overseers of the poor (*i*). If the new district already contains a church or chapel, whether consecrated or unconsecrated, the "new parish" is formed directly the scheme is ratified (*j*). In consideration of endowments, the right of nomination of the "minister" or "vicar" may be assigned, but until so assigned it belongs to his Majesty and the bishop alternately. In certain cases it may be vested in the incumbent of the original parish (*k*). The Commissioners have power to dissolve any such new district where a church has not been provided, return the endowments, and re-arrange such district in the way they think most expedient (*l*).

A re-settlement and apportionment of endowments may be

(*b*) 6 & 7 Vict. c. 37, s. 12.
(*c*) Sect. 13.
(*d*) 19 & 20 Vict. c. 104, s. 2.
(*e*) *Hughes* v. *Lloyd* (1888), 22 Q. B. D. 160; 19 & 20 Vict. c. 104, s. 32.
(*f*) See note (*z*), p. 226.
(*g*) See note (*a*), p. 226.
(*h*) 47 & 48 Vict. c. 65, s. 2.
(*i*) 6 & 7 Vict. c. 37, s. 17.
(*j*) 19 & 20 Vict. c. 104, ss. 1, 2.
(*k*) 6 & 7 Vict. c. 37, s. 20. See various details in 19 & 20 Vict. c. 104, ss. 16 *et seq.*
(*l*) 47 & 48 Vict. c. 65, s. 2.

made (*l*). The Chancery Division makes orders apportioning charitable trusts between the new parishes and the old, but any such order is not final, and the Court has jurisdiction to make fresh orders from time to time, to meet the changing circumstances of the parish (*m*).

Where a new parish has been formed, whether under the Church Building or New Parishes Acts, the incumbent of such new parish has the exclusive cure of souls therein, saving the rights of the bishop. He has an exclusive right of solemnizing marriages by banns between persons resident in the new parish. The incumbent of the mother church has no right to interfere. But where the marriage is by licence granted in due form, the proper course for any incumbent is to assume the regularity of the licence and perform the ceremony (*n*). The incumbent of the mother church has also no right to the pew rents of, or to appoint the clerk or sexton for the new benefice (*o*).

Union. Union of benefices or ecclesiastical parishes are effected under the Pluralities Act, 1838, and subsequent Acts, by which it is provided (*p*) that whenever it appears to the archbishop that two or more benefices, being either in the same parish or contiguous to each other (of which the aggregate population does not exceed 1,500 persons, but without regard to the aggregate yearly value (*q*)), may with advantage be united, the archbishop is to inquire into the circumstances of the case, and if the patrons consent in writing, is to proceed as follows:—Publicly cause to be exhibited a statement of the facts, in each benefice; with notice to interested persons to show cause against the union within six weeks, and if no cause is shown, certify the inquiry and

(*l*) 19 & 20 Vict. c. 104, ss. 26, 31.

(*m*) 8 & 9 Vict. c. 70, s. 22; *Re Campden Charities* (1883), 24 Ch. D. 213; and see Tudor on Charities.

(*n*) 19 & 20 Vict. c. 104, s. 15; *Tuckniss* v. *Alexander* (1863), 32 L. J. Ch. 794; *Fuller* v. *Alford* (1883), 10 Q. B. D. 418.

(*o*) *Fitzgerald* v. *Fitzpatrick* (1864), 12 W. R. 771.

(*p*) 1 & 2 Vict. c. 106, ss. 16 *et seq.* As to the construction of an old Act of union see *Elcho* v. *Andrews*, [1910] 1 Ch. 706.

(*q*) 13 & 14 Vict. c. 98, s. 8.

consent aforesaid to his Majesty in Council, who may thereupon make an order uniting such benefices into one benefice with cure of souls for ecclesiastical purposes only, and regulating the course in which the patrons, if more than one, are to present and determine (if necessary) the diocese to which the united benefice shall belong. The order is to be registered in the diocesan registry, and thenceforth becomes binding on all parties whatsoever. If both or all the benefices to be united are full, the union will not become complete until the avoidance of all but one of such benefices. Notwithstanding such union the parishes or places continue distinct for secular purposes. The orders made under this section are published in the *London Gazette* (*r*). Part of the property of the benefices to be united may, in certain cases, be excepted out of the united benefice to augment an adjoining poor benefice (*s*). United benefices may be disunited again, if, from increase of population or other circumstances, it shall appear to the archbishop desirable. The formalities are similar to those required for a union, but the patron's consent is not necessary except in the case of benefices which have been united for more than sixty years before the passing of this Act, and provision is made for dividing the property, &c. (*t*). In a similar way any tithing, hamlet, chapelry, place, or district may either be constituted a separate benefice or be united to any other parish or district, parochial or extra-parochial, to which it may be conveniently annexed, and for this purpose may be transferred to another diocese (*u*).

These provisions have been extended by the Union of Benefices Act, 1860, so as to make better provision for the union of contiguous (*x*) benefices in the metropolis without regard to population or annual value. Under this Act the bishop issues a commission of inquiry; then, if a union is

(*r*) See Pulling's and the Authorized Index.
(*s*) 1 & 2 Vict. c. 106, ss. 16—18.
(*t*) Sects. 21—25.
(*u*) 1 & 2 Vict. c. 106, s. 26; 50 & 51 Vict. c. 68.
(*x*) See 18 & 19 Vict. c. 120.

recommended, transmits proposals for a scheme to the vestry and churchwardens, and finally to the Ecclesiastical Commissioners, who certify the same to his Majesty in Council. The Judicial Committee of the Privy Council are to consider protests against the scheme (*y*). And by the Union of Benefices Act, 1898, a scheme for the removal of a church or parsonage under the Act of 1860 may be made if it provides for the erection of another church or parsonage for a benefice within, or partly within, the Metropolitan Police District (*z*).

Subject to the Union of Benefices Acts, the above provisions are also extended by 34 & 35 Vict. c. 90 (*a*), by which it is provided that one of the churches may be constituted the parish church of the united benefice, and the other churches may be pulled down or used as chapels of ease or mortuary chapels, and the vestry-room of the church so constituted shall be the vestry-room of the united parish (s. 3), and generally the rights of the parishioners shall be the same as if such church had always existed as such parish church (s. 6). The power of carrying this into effect rests with the bishop upon the application of the incumbent and patron, and with the consent of two-thirds of the parishioners of the united benefice in vestry assembled; but the bishop may not make any decree for pulling down a church until a sum sufficient to defray the transfer to the parish church of tombstones, monuments, tablets, and monumental inscriptions in such church, as provided by the Act, has been collected by voluntary subscriptions and placed in the hands of two or more trustees (ss. 3 and 5). Where the church is only partly pulled down, the monuments, &c. may be removed to the part of the church remaining standing. The site of the disused church is to be kept free from desecration, and also the churchyard; and until such churchyard shall be legally closed, the persons for the time being having rights of burial

(*y*) 23 & 24 Vict. c. 142. (*z*) 61 & 62 Vict. c. 23.
(*a*) Preamble, and sect. 4.

therein shall not be entitled to burial in any other churchyard within the limits of the united benefice (s. 4). The lectureships belonging to any church ceasing to be used for Divine Service shall go to the parish church, as also trust moneys for maintenance, repairs, and insurance, unless the church is used as a mortuary chapel (s. 5). The bishop may, under this Act, re-adjust the seats (*b*).

Parish Councils have nothing to do with matters ecclesiastical. (*See* VESTRY.)

PARISH CHURCH. It has been said that existence from time immemorial of baptism and sepulture are necessary proofs of a parochial chapel (*c*) (unless created under a statute); but it is possible that such a church is only a chapel of ease. Thus an ancient chapelry, situate within a large parish, had from time immemorial had a separate church and churchyard, and separate churchwardens and church rates; and the incumbent had performed marriages, christenings, churchings, and burials, and retained the fees for his own use; but this chapelry was held not to be a distinct parish (*d*).

A parochial chapel is always assumed to have been properly consecrated (*c*), but there are said to have been instances of the reconsecration of a parish church where the name of the patron saint had been forgotten. Where there has been desecration of a church, as by shedding of blood therein, or by stalling beasts, holding plays, banquets, or temporal courts therein (*e*), reconciliation, not reconsecration, is the proper ceremony (*f*). Where a church or chapel has been rebuilt, repaired, or enlarged, and the external walls have been partly destroyed, or the position of the Communion Table altered, all marriages, rites, and ceremonies of the

(*b*) *See* PEWS.
(*c*) *Ex parte Greenhouse* (1815), 1 Madd. 108.
(*d*) *Tuckniss* v. *Alexander* (1863), 32 L. J. Ch. 794.
(*e*) Can. 88.
(*f*) Gib. 189. Reconciliation seems to be of very doubtful legal value. For the proceedings in the case of St. Paul's Cathedral in 1891, see Tristram's Judgments, 164, and 7 T. L. R. 276.

Church are valid, although such church be not reconsecrated (and the marginal note adds) "or reconciled" (*g*). A church may also be pulled down, and the endowments and ornaments transferred to a new church by order of the Ecclesiastical Commissioners under 8 & 9 Vict. c. 70 (*h*). A church can only be unconsecrated by Act of Parliament (*i*). There is no Prayer Book form for the consecration, reconsecration, or reconciliation (*j*) of churches or churchyards. An informal service drawn up in 1712 is generally used for consecration services, and a bishop is required to officiate (*k*). The fees payable to the bishop's officials on the consecration of a church and burial ground amount to 12*l*. 12*s*. (For particulars, *see* FEES.) Where reconsecration or reconciliation is necessary, the incumbent has no right to oppose the ceremony (*l*). No church can be consecrated unless the ground on which it stands is freehold, and the property of the Church or some spiritual corporation (*m*).

With consent of the bishop, the sacraments and other rites of the Church (except marriage) may be performed by the clergy in an unconsecrated building (*n*), and many parishes have now an unconsecrated mission chapel.

A church may be wholly pulled down under a faculty and under provisions contained in 8 & 9 Vict. c. 70. In granting the necessary faculty it is lawful for the bishop to make proper provision for the use or preservation of the site (*o*). A church may also be removed or enlarged by faculty (*p*). In granting a faculty for alterations attention is given to the symmetry of the building, and also to the wishes of the sub-

(*g*) 30 & 31 Vict. c. 133, s. 12, and see *Parker* v. *Leach* (1866), L. R. 1 P. C. 312.

(*h*) *St. Mary, Bishopstoke* (1909), 26 T. L. R. 86 (D. A.).

(*i*) *Queen* v. *Twiss* (1869), L. R. 4 Q. B. 412; *Ex parte Greenhouse, ubi sup.* For an example see Duke of York's School (Chapel) Act, 1910 (1 Geo. 5, c. 16).

(*j*) See note (*f*), p. 231.

(*k*) For this form, see 1 Burn, 327 *et seq.*

(*l*) *Rugg* v. *Winchester* (1868), L.R. 2 P. C. 230.

(*m*) A bill has been brought into Parliament to enable leasehold sites on which places of worship stand to be compulsorily enfranchised.

(*n*) *Moysey* v. *Hillcoat* (1828), 2 Hagg. 46.

(*o*) 32 & 33 Vict. c. 94, s. 8.

(*p*) *Clayton* v. *Dean* (1849), 7 N. of C. 46.

scribers, inhabitants, and incumbent; the consent of the vestry is unnecessary (*q*).

By the Places of Worship Sites Acts, 1873 and 1882, landlords are empowered to sell and convey land to be used as sites for places of worship and residence of the minister, or for a burial place, provided that each such site does not exceed the extent of one acre. A form of conveyance is given which should be followed as nearly as possible (*r*). Any corporation may make such a conveyance, but in the case of an ecclesiastical corporation sole below the dignity of a bishop the consent of the bishop must be obtained, and in the case of trustees of charitable property the consent of the Charity Commissioners, and in the case of parochial property the consent of the majority of ratepayers and owners of property duly convened, and in the case of tenants for life the remaindermen or trustees must concur in the conveyance (*s*).

The belfry, chancel, nave, aisle, and vestry, are all parts of the church, and are protected from profanation (*t*).

The parishioners have no right to enter any part of the church, except during Divine Service, without the permission of the minister. The minister (and not the churchwardens) is entitled to the custody of the keys. He must not, however, refuse to give the churchwardens access to the church at proper seasons (*u*); indeed, it has been stated that the latter have the right of free ingress and egress at all times (*x*).

PARISH CLERK is a *temporal* office (*y*) of extreme antiquity (*z*). A freehold may be held in it subject to removal for misconduct or neglect (*a*). It is sometimes held together with that of sexton (*q. v.*). A parish clerk cannot assign

(*q*) *See* FACULTY and ORNAMENTS; 1 Add. 470; 2 Add. 433.

(*r*) 36 & 37 Vict. c. 50, s. 4. *See* CHURCHYARD.

(*s*) 45 & 46 Vict. c. 21, ss. 1 and 2.

(*t*) *See* SACRILEGE; VESTRY.

(*u*) *Ritchings* v. *Cordingley* (1868), L. R. 3 A. & E. 113.

(*x*) *Griffin* v. *Deighton* (1864), 33 L. J. Q. B. 181.

(*y*) *Lawrence* v. *Edwards*, [1891] 2 Ch. 72.

(*z*) Leland says it is next in dignity to the clergy.

(*a*) 7 & 8 Vict. c. 59, s. 5.

his office, but it would seem that he may appoint a deputy (*b*).

The incumbent usually appoints both in old and new parishes, and, by the canon, he must signify the appointment to the parishioners the next Sunday following during time of Divine Service (*c*). If the incumbent becomes bankrupt and a sequestration is issued, he nevertheless retains his right to appoint, unless he has been suspended or inhibited, in which case the curate in charge as "minister for the time being" appoints (*d*). But if the incumbent is suspended under the Clergy Discipline Act, 1892, the Court must be applied to (*e*). Stamp duty on licence, 10*s*. (*f*).

Under the Church Building Acts the office is an annual one (*g*), but under the New Parishes Acts the incumbent can appoint for an indefinite period, and has an express power of removal given him, with consent of the bishop, for any misconduct (*h*). By custom, it is said, the clerk may be chosen by the parishioners, and in some cases by the rector and parishioners jointly (*i*). The appointment may be either in writing or by word of mouth. The remuneration, consisting of fees on marriages and burials, usually depends upon custom. A person in holy orders may be appointed and required to act as assistant curate if necessary, but such appointment is not to confer any freehold or absolute right to the office; and the clerk appointed is to be subject to the same rules as to suspension and as to being licensed as an ordinary curate (*k*). But the person appointed is usually a layman who, by the canon law, is required to be at least twenty years of age, and be approved by the incumbent, and of competent skill in singing (*l*). The arch-

(*b*) *Nichols* v. *Davis* (1868), L. R. 4 C. P. 80.
(*c*) Can. 91.
(*d*) *Lawrence* v. *Edwards*, [1891] 1 Ch. 144, 149; *Pinder* v. *Barr* (1854), 4 Ell. & B. 105.
(*e*) 55 & 56 Vict. c. 32, s. 6.
(*f*) 54 & 55 Vict. c. 39.
(*g*) See 59 Geo. 3, c. 134, s. 29; *Bailey* v. *Edmundson* (1909), 25 T. L. R. 681.
(*h*) 19 & 20 Vict. c. 104, s. 9.
(*i*) See *Hartley* v. *Cooke* (1833), 9 Bing. 728.
(*k*) 7 & 8 Vict. c. 59, s. 2.
(*l*) Can. 91.

deacon or other ordinary has power to suspend or remove a lay parish clerk by judicial process (*m*), and the bishop has power to eject him from premises held in right of his employment (*n*). The remedy for wrongful removal before 1844 was by mandamus to compel the incumbent to restore him (*o*). A mandamus (*q. v.*) lies to compel an incumbent to appoint a parish clerk (*p*).

(As to clerk of parish council, *see* Local Government Act, 1894 (*q*).)

PARISHIONER. Under the Roman canon law "parishioners" means all the inhabitants of a parish, including travellers passing through (*r*); but the law deems a "parishioner" to be a person who owns property in a parish in respect of which he pays parish rates, whether resident or not (*s*). The words "members of the families of parishioners" will include members of the family who are non-parishioners (*t*). The word "parishioner" has a special meaning under the Public Worship Regulation Act (*q. v.*).

PARSON (Lat. *persona ecclesiæ*, the person of the church) is strictly one who has full possession of all the rights of a parochial church, as by his *person* the church, which is an invisible body, is represented (*u*). He is a corporation sole. (*See* INCUMBENT.)

PASTORAL STAFF. On the principles of the Privy Council decisions the pastoral staff is an illegal "ornament of the minister." Its use was ordered by the Ordinal of

(*m*) 7 & 8 Vict. c. 59, s. 5.
(*n*) 7 & 8 Vict. c. 59, s. 6.
(*o*) *Rex* v. *Warren* (1796), Cowp. 370; *Reg.* v. *Smith* (1844), 13 L. J. Q. B. 166.
(*p*) See *Rex* v. *St. Anne's* (1766), 3 Burr. 1877.
(*q*) 57 & 58 Vict. c. 73, s. 17.
(*r*) Lyndwood, 233.
(*s*) *Batten* v. *Gedye* (1889), 41 Ch. D. 507; *Kensit* v. *Ethelburga*, [1900] P. 80; and see cases on interest, ECCLESIASTICAL COURTS; and definition of parish, *ante*, PARISH.
(*t*) *Re Sargent* (1890), 15 P. D. 168.
(*u*) 1 Bla. Com. 384.

1550, struck out in that of 1552, and never restored. Church custom is in accord with this view. The origin of the pastoral staff is attributed by some authorities to the adoption by the Christian clergy of the augur's staff of the heathens. According to others, it was originally simply "the episcopal walking-stick," the bishops being generally elderly men. The early staff was certainly much shorter than the mediæval. Subsequently there arose the ceremony of presenting a pastoral staff to bishops on their consecration, to denote that they were the shepherds of the flock of Christ, the bishop's staff being crooked and the archbishop's surmounted with a cross (*x*). But Bishop Gibson, writing in 1713, and speaking of the pastoral staff, mitre, episcopal ring and gloves, says:—"All which and many other superstitions of a like nature" (as savouring more of the ceremonies of the Jewish than of the simplicity of the Christian religion), "our Reformed Church hath prudently and piously laid aside, retaining only such outward tokens as are most *ancient* and most *grave*" (*y*).

PATEN (Lat. *patina*). The ancient name of the bread plate used at the Lord's Supper (*q. v.*). (*See also,* ORNAMENTS.)

PATRIARCH. There is no officer of this name in the Church of England. The patriarch is (in foreign countries) the most exalted of all ecclesiastical dignitaries. He is the chief bishop over several countries or provinces, and hath archbishops under him. The Bishops of Jerusalem, Antioch, Alexandria, Rome, and Constantinople are all patriarchs. The chief bishop of the Armenians is also styled patriarch. The Bishop of Rome was the patriarch of the Church in England, as of other western Churches. Most of the

(*x*) See Smith, Dict. of Chr. Ant.

(*y*) Bishop Gibson's Codex (1713). See Report of Ritual Commission of 1867 and of the Upper House of Convocation of York, 1908, and *contrà* the Report of a Committee of the Upper House of Convocation of Canterbury, 1908, arguing on the "Ornaments Rubric."

functions of a patriarch are performed by the sovereign. In Russia the patriarchate of Moscow is now vested in the Holy Governing Synod.

The Archbishops of Canterbury and Armagh, and other metropolitans, have in a limited degree patriarchal powers, *i.e.*, powers extending beyond the limits of their own provinces.

PAUPER. The poor of England, till the time of Henry VIII., subsisted entirely upon private benevolence and the charity of well-disposed Christians; and though it appears that before that time at common law the poor were to be sustained by the rectors and parishioners, and statutes were passed with reference to the poor, yet, till 27 Hen. 8, c. 25, there was (in the words of Blackstone) no compulsory method chalked out for this purpose (*z*). The monasteries did a great deal for the relief of the poor, but upon their total dissolution the inconvenience of thus encouraging habits of indolence and beggary was quickly felt throughout the kingdom, and the poor-laws were the result. The administration of these laws is now in the hands of the Local Government Board. Two or more parishes are united, and called a *union,* the affairs of which are managed by a representative board of ratepayers and owners, called the "Guardians of the Poor." Each union has to provide for the burial of paupers, and generally employs a permanent chaplain (*a*).

PECULIAR is an ecclesiastical district which is exempt from the ordinary jurisdiction of archdeacon, bishop, and archbishop, and subject only to the visitation of the Crown as head of the Church. There were, as appears from the Report of the Ecclesiastical Commissioners, in 1832, upwards of 300 of such special ecclesiastical jurisdictions in England, including royal peculiars, of which there were eleven. Most of

(*z*) 1 Bla. Com. 359.
(*a*) *See* WORKHOUSE CHAPLAIN; also Sir G. Nicholl's History of the Poor Law; Glen's Poor Law Statutes.

these were abolished by 6 & 7 Will. 4, c. 77, and the Orders in Council made in pursuance thereof; but the cathedral churches, the royal residences, and the churches or chapels founded therein or annexed thereto, including Westminster Abbey, were excepted, and therefore still remain peculiars (*b*). (*See* VISITATION.)

The bishops, however, have jurisdiction over peculiars for the purposes of the Church Discipline Act (*q. v.*) (*c*).

PENSION. (*See* BISHOP; RESIGNATION; BANKRUPTCY.)

PERPETUAL CURATE. (*See* VICAR.)

PEWS. Of common right the use of pews in the body of the church belongs to the parishioners at large (*d*). The disposal and arrangement of the seats belong to the ordinary, but he usually leaves the matter in the control of the churchwardens, who for that purpose are his officers (*e*). In London there is said to be a custom that the churchwardens alone have the ordering of the seats. In a cathedral, not being a parish church, it would seem there can be no allocation of seats unless by the bishop (*f*). Neither the minister nor the vestry has any right to interfere (*g*) except by making a representation to the ordinary. At common law, the right to a pew is only a right to use it for the services of the church and at times when it is open for use, subject to the regulations of the church; and there is no right of access to it or to use it for any other purpose, except repairs. It gives no freehold interest in the soil of the church, or right to a vote for the county, and this has been held to be so on the construction of private Acts which serve to give a freehold

(*b*) See judgment of Chitty, J., in *Combe* v. *De la Bere* (1882), 22 Ch. D. 328; see also 3 & 4 Vict. c. 113; 13 & 14 Vict. c. 76.
(*c*) 3 & 4 Vict. c. 86, s. 22.
(*d*) 12 Rep. 105.
(*e*) *Per* Bowen, L. J., *Halliday* v. *Phillips* (1889), 23 Q. B. D. at p. 53. *And see* CHURCHWARDENS; BRAWLING.
(*f*) *Re Londonderry Cathedral* (1863), 8 L. T. N. S. 861.
(*g*) *Fuller* v. *Lane*, *ubi inf.*

interest (*h*). The rector, lay or ecclesiastical, is entitled to the chief seat in the chancel, unless it be prescribed for by another (*i*). The parishioners have a claim to be seated according to their rank and station, but the churchwardens must not accommodate the higher classes beyond their real wants to the exclusion of the poorer; *all* being equally entitled to accommodation (*k*). The churchwardens are not entitled to put other persons into allotted seats, until after the commencement of the service, and even this right should be exercised in a considerate manner (*l*). These general rights may be cut down by particular rights: thus, a possessory right (*i.e.*, mere occupancy), though not good against the churchwardens and ordinary, will carry weight, for the ordinary would give a person in possession *cæteris paribus* the preference over a mere stranger (*m*). No churchwarden is justified in dispossessing any one of a sitting he has held for a time, without giving him notice and offering an opportunity for explanation (*n*). A possessory right is sufficient to maintain an action in the Ecclesiastical Courts, but not in the common law Courts, against a mere disturber; but by mere possession in itself no right can be established (*o*). For this there must be a faculty, or a prescriptive right from which a faculty may be presumed. A pew may be attached to a house, but not in any case to lands; nor can a faculty be granted to a man and his heirs (*p*), or to an extra-parochial person (*q*). A faculty may be granted by the ordinary for a term (*e.g.*, ninety-nine years), in which case the right of the parishioners to the use of the pew revives at the end of the

(*h*) *Brumfitt* v. *Roberts* (1870), L. R. 5 C. P. 232; *Greenway* v. *Hockin* (1870), L. R. 5 C. P. 235.

(*i*) *Spry* v. *Flood* (1840), 2 Curt. 357; *Bradford* v. *Fry* (1878), 4 P. D. at p. 114; *Stileman*, [1897] 1 Q. B. 749.

(*k*) *Fuller* v. *Lane* (1825), 2 Add. 426. *But see* PEW RENTS.

(*l*) *Per* Tristram, C., in *Claverley* v. *Claverley*, [1909] P. 216.

(*m*) *Pettman* v. *Bridger* (1811), 1 Phill. Rep. 324.

(*n*) *Horsfall* v. *Holland* (1859), 6 Jur. N. S. 278.

(*o*) See *Halliday* v. *Phillips*, *ubi inf.*; *Proud* v. *Price*, [1893] C. A. 1 R. 40; 42 W. R. 102.

(*p*) *Stocks* v. *Booth* (1786), 1 T. R. 428.

(*q*) *Byerley* v. *Windus* (1826), 5 B. & C. 1. *And see* PARISHIONER.

term (*r*). If there be no proof of a faculty there may be proof of such "immemorial" usage as presumes the grant of a faculty at some time. Thus, though mere possession of a pew by the owners of a certain house for 200 years is by itself not sufficient, long-continued enjoyment (*e.g.*, for about seventy years), if accompanied by the performance of acts inconsistent with mere possession by permission of the churchwardens—such as repairs, and the keeping the pew under lock and key, non-payment of rent where rent is usually payable, &c.—will justify the presumption of a lost faculty (*s*). A lost faculty supposed to have been granted after 1825 will not be presumed (*t*). A prescriptive right to a pew, whether in the body of the church or in the chancel, must be clearly proved (*u*). The "immemorial" use, and repair required to establish it, need not be the period of "high legal memory," but must be for a time extending beyond the period of living memory, *e.g.*, about seventy years—thirty or forty years would not suffice (*x*). A conclusion adverse to the pew owner is, however, not to be drawn from the fact that no repairs have been done where no repairs have been necessary, but Lord Penzance presumed that some repairs would be required in a period of seventy or eighty years (*y*). Putting in an ordinary lining and new cushions are not acts of "repair" (*z*). The Prescription Act is said not to apply to a pew (*a*). Twenty (or now, perhaps, twelve) years' adverse possession seems to bar the right to a pew (*b*). If the prescriptive right is proved, the pew must not be repaired or altered without the owner's consent (*c*). Where the

(*r*) 3 Hagg. Ecc. R. 733.

(*s*) *Halliday* v. *Phillips* (1889), 23 Q. B. D. 48; and in H. L., (1891) A. C. 228; *Stileman-Gibbard* v. *Wilkinson*, [1897] 1 Q. B. 749.

(*t*) *Claverley* v. *Claverley*, [1909] P. 195, as such a presumption would be inconsistent with *dicta* in *Fuller* v. *Lane*, that the practice of freely granting faculty seats should be discontinued.

(*u*) 1 Phill. R. 325.

(*x*) 1 Hagg. Cons. R. 322; and see *Halliday* v. *Phillips*, *ubi sup.* p. 234.

(*y*) *Crisp* v. *Martin* (1876), 2 P. D. 28.

(*z*) *Stileman-Gibbard* v. *Wilkinson*, [1897] 1 Q. B. 760.

(*a*) *Crisp* v. *Martin*, *ubi sup.*; 2 & 3 Will. 4, c. 71, s. 2.

(*b*) 1 Phill. 328.

(*c*) *Knapp* v. *Willesden* (1851), 15 Jur. 473.

members of a corporation have as such occupied a particular pew, the repairs of it may be charged on the borough fund, although the pew does not belong to the corporation, it being considered a species of occupation essential to their duties (*d*). It would seem that a corporation cannot claim a pew by prescription, but may obtain one by faculty (*e*). Extra-parochial persons cannot claim a prescriptive right to seats in the body of the church, though they may claim by faculty or prescription seats in the aisle or chancel (*e*). A pew in an aisle, or even in the nave of the church, or a chancel, or an aisle, may be prescribed for as appurtenant to a house out of the parish (*f*). If a pew is an easement, the remedy for a disturbance may be by action for damages in the King's Bench Division (*g*); but in ordinary cases the Ecclesiastical Courts have jurisdiction in actions relating to pews. Priority in a seat, as well as a seat itself, may be claimed by prescription, and there is a remedy at common law (*h*). The right to sit in a pew may be apportioned where the messuage is divided (*i*). A pew annexed by prescription to a house cannot be severed from the occupancy of that house, and the tenant for the time being has *de jure* the prescriptive right to the pew (*k*), which cannot be sold or let separately without a special Act of Parliament or under the provisions of the New Parishes and Church Building Acts. An exchange may, however, be made by faculty (*l*).

By the New Parishes Act, 1869, all kinds of pews, whether held on trust or otherwise, may be surrendered by deed, with or without consideration, to the bishop or the Ecclesiastical Commissioners, and thereupon such pews become subject to

(*d*) *Queen* v. *Warwick* (1846), 15 L. J. Q. B. 306.

(*e*) *Byerley* v. *Windus*, *ubi sup.*; *Fuller* v. *Lane* (1825), 2 Add. 427; *Halleck* v. *Univ. of Cam.* (1841), 1 Gale & D. 100.

(*f*) *Churton* v. *Frewen* (1866), L. R. 2 Eq. 656.

(*g*) *Mainwaring* v. *Giles*, 5 B. & Ald. 361.

(*h*) *Carleton* v. *Hutton*, Noy, 78.

(*i*) *Harris* v. *Drewe* (1831), 2 B. & Ad. 164.

(*k*) 1 Hagg. Cons. 319.

(*l*) *Stocks* v. *Booth*, *ubi sup.*, at p. 431.

the general law, save that in unconsecrated churches and chapels they shall absolutely belong (but only until the consecration) to the bishop or the commissioners as the case may be (*m*). Under the Church Building Acts pews may be let or sold, under the provisions of the Acts, by private contract, but not by public auction (*n*).

By the Union of Benefices Act, 1871, upon any union of benefices the bishop is authorized to alter and readjust the seats and the appropriation thereof by faculty, so that not less than one-half of the sittings be left unappropriated, and all such seats, whether appropriated or free, shall be made as near as possible of the same size and general appearance (*o*).

A faculty for a gallery will be granted if more accommodation is required (*p*).

PEW RENTS. In new churches rents are often charged for pews. They form part of the endowment, and cannot be mortgaged by the minister (*q*); though they may be assigned for building purposes, subject to church expenses, with the consent of the commissioners (*r*).

Under the Church Building Acts, 1818 and 1819, pew rents are payable in advance half-yearly at Lady Day and Michaelmas. On admission on either of those days a year's rent is payable, or if at an intermediate period, the proportion of the half-year's rent and a half-year's rent in addition. The pew is forfeited by non-payment in advance for two following half-years. The pew rents may not be sold by auction (*s*). They are recoverable by the churchwardens (*t*).

Churchwardens of district churches, appointed under these Acts, are bound to pay over the pew rents, applicable to the minister's stipend, as soon as they are received, and the minister has a right of action on the statute or for money

(*m*) 32 & 33 Vict. c. 94, ss. 2—5.
(*n*) 59 Geo. 3, c. 134, s. 32. *See* PEW RENTS.
(*o*) 34 & 35 Vict. c. 90, s. 7.
(*p*) *Evans* v. *Slack* (1869), 38 L. J. Ecc. 38, and cases there cited.
(*q*) *See* INCUMBENT as to mortgage.
(*r*) 59 Geo. 3, c. 134, s. 27.
(*s*) *Semble*, as the pews cannot. *Ibid.* s. 32.
(*t*) 58 Geo. 3, c. 45, ss. 73 *et seq.*

received against the churchwardens in the event of their not performing that duty. But, as a general rule, the minister cannot claim pew rents paid *in advance* (*u*).

Under these Acts, as to seats other than those of pew renters or free seats, the churchwardens may give a preference to subscribers to church funds (*x*).

Under the New Parishes Act, 1856, the Ecclesiastical Commissioners have power, with respect to a new district church, if it shall appear to them that sufficient funds cannot be provided from other sources, but not otherwise, with the consent of the bishop, to order pew rents to be levied by the churchwardens according to a scale which may be altered by the commissioners from time to time. The proceeds, not otherwise appropriated by law, are to be applied for repairs of the church, and maintenance of the church services and of the minister. But in any case one-half of the sittings must be free, and these must be as well placed as the others (*y*). Provision is also made for free seats under various other Church Building Acts (*z*).

By the Church Seats Act, 1872, it is declared unlawful to let the seats or pews, or a specified portion thereof, for payment of money, where a church site has been accepted by the Ecclesiastical Commissioners on condition that such seats shall be free; but in every such case a sufficient stipend shall be secured to the incumbent, and (in case of all the seats being free) of not less than 100*l*. per annum (*a*).

Where a third service is ordered under 58 Geo. 3, c. 45 (*see* PUBLIC WORSHIP), the bishop may order pews, not held by faculty or prescription, to be let for that service, in order to provide the curate's salary.

In a proprietary chapel the proprietor may charge what pew rents he pleases. (*See* CHAPEL.)

(*u*) *Lloyd* v. *Burrup* (1868), L. R. 4 Ex. 63.

(*x*) *St. Saviour*, [1898] P. 217.

(*y*) 19 & 20 Vict. c. 104, ss. 6 *et seq.*

(*z*) 58 Geo. 3, c. 45, ss. 62 *et seq.*; 5 Geo. 4, c. 103, ss. 10, 15, 18; 1 & 2 Will. 4, c. 38, ss. 2, 22. As to powers of ordinary, see *St. Saviour*, [1898] P. 217.

(*a*) 35 & 36 Vict. c. 49.

PLURALITY. Under the Pluralities Act, 1838, no spiritual person, except an archdeacon (who may hold two benefices with his archdeaconry), can hold more than two benefices (*b*). And by that Act, as amended by the Pluralities Acts, 1850 and 1885, in order to hold two benefices together—(1) the churches must be within four miles of one another by the nearest road, and the annual value of one of the benefices must not exceed 200*l*.; if on one of the benefices there be no church, then the distance between the two benefices shall be computed in such manner as the bishop shall direct (*c*); (2) a licence or dispensation must be obtained from the Archbishop of Canterbury (*d*). For the purpose of estimating the annual value of the benefice, all taxes, rates, tenths, dues, and permanent charges and outgoings, may be deducted, but not curate's stipend, or tenant's taxes in respect of or repairs to the house of residence or glebe (*e*). The only fees payable "on the licence" are:—Archbishop's registrar of faculties, 30*s*.; seal keeper, 2*s*.; and there is no stamp duty (*f*). From the archbishop's refusal to grant a licence an appeal lies to his Majesty in Council. Before applying for the licence a statement in the proper form as to the population, income, &c. of each benefice must be transmitted to the bishop, who (if he finds it correct) must forward it to the archbishop within one month (*g*). The acceptance of an additional preferment, contrary to the provisions of these Acts, vacates, *ipso facto*, every preferment then held, as if the holder had died or resigned the same (*h*). (*But see* SUFFRAGAN.)

Deans of cathedrals may not hold headships of a college at Oxford or Cambridge, Eton, Winchester, or Charterhouse,

(*b*) 1 & 2 Vict. c. 106, s. 2. See the Pluralities Acts, set out with notes in Chitty's Acts relating to the Church and Clergy, 1894.
(*c*) 48 & 49 Vict. c. 54, s. 14.
(*d*) 1 & 2 Vict. c. 106, s. 6.
(*e*) 13 & 14 Vict. c. 98, s. 4.
(*f*) 1 & 2 Vict. c. 106, s. 6. Nevertheless, additional fees amounting to 3*l*. 3*s*. 6*d*. were subsequently made payable under an order gazetted 24 July, 1857. *See* FEES.
(*g*) Sect. 7.
(*h*) Sect. 11; and 13 & 14 Vict. c. 98, s. 7.

except that the Dean of Christ Church, Oxford, may be head of Christ Church College. Heads of university colleges, also holding a benefice, may not hold any other benefice, unless such benefice is permanently attached to their office (*i*).

POPE was anciently a usual title for a bishop or priest, but is now borne only by (1) the Bishops of Rome and Alexandria, (2) the priests of the Greek Church. The leading Greek bishops use the title of Patriarch (*q. v.*) instead of Pope. In post-Reformation statutes the Pope is styled Bishop of Rome (*k*).

PRÆMUNIRE (from the commencement of the writ, *præmunire facias* A. B., let A. B. be forewarned). The offence of maintaining the papal power in England (*l*). The statutes of Provisors and *Præmunire* were passed in the days of the papal usurpation in England to counteract the great evil of a foreign authority interfering with the rights of king and Parliament. Blackstone says Edward I. was the first to set himself in earnest to shake off this servile yoke. He would not suffer his bishops to attend a general council until they had sworn not to receive the papal benediction. The succeeding monarchs carried matters further, until by the time of Henry IV. "the usurped civil power of the Bishop of Rome was pretty well broken down, as his usurped religious power was in about a century afterwards."

PRAYER BOOK. The Book of Common Prayer contains the various rites and ceremonies of the Church according to the use of the Church of England, together with the Psalter and Ordinal (*m*), and Queen Elizabeth's Act of Uniformity, which comes at the beginning and is numbered 1 in the Table

(*i*) 13 & 14 Vict. c. 98, ss. 5, 6; and see as to pluralities in University benefices 61 & 62 Vict. c. 48, s. 7 (Benefices Act, 1898).

(*k*) See 37 Hen. 8, c. 17, &c., but see 30 Car. 2, st. 2, in which the words the Pope, Popery and Papists are used.

(*l*) 4 Bla. Com. 103.

(*m*) 13 & 14 Car. 2, c. 4. See Title Page; and for definition of Prayer Book, see Public Worship Regulation Act.

of Contents. The Book is annexed to King Charles II.'s Act of Uniformity. Before the Reformation nearly every diocese had a somewhat different use, that of Sarum being the most important. The first uniform Prayer Book was that known as the first Prayer Book of Edward VI., published in 1549. At that date the doctrine of the English Church as to the real presence and the nature of the Holy Communion was undecided (*n*). The second Prayer Book of Edward VI. followed in 1552, and was of a much more Protestant character than the former. The reign of Mary brought back the Romish books for a few years, but in the year 1559 the book of 1552 (altered in three or four specified particulars and not otherwise (*o*)) was re-introduced, and with the exception of a few alterations, chiefly made in the reigns of James I. and Charles II., is the Prayer Book we now use (*p*). The Prayer Books of 1549, 1552, and 1662 have the force of statutes under the Uniformity Acts of those dates.

In the performance of the services, rites and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted (*q*).

PRAYERS FOR THE DEAD are discouraged by the Church of England and declared to be useless. The Homily is the only place where the Anglican doctrine is expressly stated: "Neither let us dream any more that the souls of the dead are anything at all holpen by our prayers, but, as the Scripture teacheth us, let us think that the soul of man passing out of the body goeth straightways either to heaven or else to hell, whereof the one needeth no prayer and the other is without redemption" (*r*), and, as before men-

(*n*) *Liddell* v. *Westerton* (1857), Moore's Rep. 179.

(*o*) See 1 Eliz. c. 2, s. 3.

(*p*) See on this subject the works of Adolphus, Daniel, Proctor, Wheatley, Bennet, Stephens, and Tomlinson on the Prayer Book.

(*q*) *Westerton* v. *Liddell* (1857), Moore's Rep. 187; *Martin* v. *Mackonochie* (1868), 2 P. C. 365. *And see* PUBLIC WORSHIP.

(*r*) Homily of Prayer, 3rd part.

tioned (*s*), public prayers for the departed have been discontinued since 1552.

PREACHING. No *person* shall be permitted to preach or read any sermon or lecture in any church, chapel, or other place of public worship, unless he be first approved, and thereunto licensed by the archbishop of the province or the bishop of the diocese, under penalties (*t*). A separate licence to preach is now, however, but rarely given to a clergyman, this being included in his general licence to officiate; but if a layman is to preach in a consecrated church, such a licence is necessary. The bishop may suspend the licence of any preacher who acts irregularly (*u*), and it would seem that a clergyman duly licensed in one diocese may not preach or officiate in another against the bishop's inhibition (*x*).

No minister may preach in any private house except in times of dangerous sickness (*y*); but he may read a sermon to his own family (*z*). A stranger is not to be allowed to preach without showing his licence (*a*), and the churchwardens are supposed to enter the names of strange preachers in a book (*b*).

The only sermon provided for in the Prayer Book is at the Communion Service, but under the Act of Uniformity a sermon might be preached at any time, provided the Prayer Book Service were previously read by some priest or deacon, the lecturer or preacher being present during such service (*c*); but now, by the Act of Uniformity Amendment Act, 1872, a sermon or lecture, if preceded by the Bidding Prayer (*q. v.*), or a Prayer Book Collect, may be preached without

In *Breeks* v. *Woolfrey*—as to which *see* ARTICLES—Sir H. Jenner Fust stated that the Church discourages prayers for the dead, though he declared them to be not illegal.

(*s*) *See* ARTICLES OF RELIGION.

(*t*) 13 & 14 Car. 2, c. 4, ss. 19, 21; Can. 36.

(*u*) *Trebec* v. *Keith* (1742), 2 Atk. 500.

(*x*) *Bishop of Down* v. *Miller* (1861), 5 L. T. 30; Ir. R. 11 Ch. App. 1.

(*y*) Can. 71.

(*z*) *See* CLERGY; CONGREGATION.

(*a*) Cans. 50, 51.

(*b*) Can. 52.

(*c*) 13 & 14 Car. 2, c. 4, s. 22.

a previous service (*d*). There seems to be no authority for prefacing a sermon with the words "In the name of the Father, of the Son, and of the Holy Ghost. Amen." Under the Pluralities Act the bishop has power to order two sermons on Sundays. (*See* PUBLIC WORSHIP.)

As the sermon might be preached indifferently by a minister or layman, it was not considered "a ministration"; and, therefore, the black gown, and not the surplice, became and remained for 300 years the regular and proper vestment; and is so even now, when the preacher in a consecrated church is, almost without exception, in holy orders. The surplice is, however, legal (*e*), and is now generally used. The better opinion would seem to be, that a layman may not preach the sermon at the Communion Service; but if he can be legally permitted to read the Litany or lessons, by parity of reasoning, he may (with the bishop's licence) preach the Communion Sermon (*f*).

There is no particular place appointed from which the sermon is to be preached, but the canons order a pulpit as necessary in a church (*g*).

A sermon is not "privileged"; consequently, if a clergyman "makes an example" of a member of his flock by commenting on his misconduct, and either naming him or alluding to him in unmistakable terms, he must be prepared to justify his words (if actionable), although they may have been uttered *bonâ fide* in the honest desire to reform the culprit and warn the rest of his hearers (*h*). Also, a violent sermon may be considered as brawling (*q. v.*).

As to comments upon sermons, the Court in *Gathercole* v. *Miall* (*i*) were equally divided on the question whether sermons preached in open church, but not printed or published, were matter for public comment. But if the sermon

(*d*) *See* PUBLIC WORSHIP.

(*e*) This view has been recently affirmed in C. A., *Re Robinson*, [1897] 1 Ch. 96. *See* BLACK GOWN.

(*f*) *See* PUBLIC WORSHIP, Lay Ministrations.

(*g*) Can. 83.

(*h*) Odgers on Libel, 242; and see *Magrath* v. *Finn* (1877), Ir. R. 11 C. L. 152.

(*i*) (1846), 15 M. & W. 319; 10 Jur. 337.

itself dealt with matters of public interest, it is thought it would be (*k*).

It is thought that a sermon being preached in "a church, the doors of which are thrown open to all mankind," is thereby published, so that any one may copy or multiply copies of it, unless the minister takes steps to protect the copyright (*l*).

PRECONISATION. (*See* CONFIRMATION.)

PRESENCE, The, at the Lord's Supper, has given rise to more controversy than any other doctrine. There are two kinds of presence, the corporal and the spiritual: the former is believed in by the Greek, Roman, and Lutheran churches, the latter by the Church of England and Protestants generally. Corporal presence, or real presence of the natural body and blood, is considered to exist in various modes: (1) by transubstantiation, *i.e.*, a change, during the service, of the substances of bread and wine into those of Christ's body and blood, the accidents, in school language, or sensible qualities of the former, remaining in the latter. This change may take place either (i) in the hands of the priest at the moment of consecration, as the Romanists say; or (ii) in the mouth of the recipient, as others say; (2) by consubstantiation—the Lutheran doctrine—*i.e.*, the two substances are united in the sacramental elements, so that they might be termed bread and wine, or the body and blood, with equal propriety (*m*); (3) a corporal, or real bodily presence, which, as some say, is not necessarily in the elements at all. All these views are contrary to the doctrine of the Church of England (*n*).

(*k*) Odgers, p. 48; and as to an injunction, see *Kitcat* v. *Sharp* (1882), 52 L. J. Ch. 134.

(*l*) See *per* Lord Halsbury in *Caird* v. *Sime* (1887), 12 App. C. 338.

(*m*) 1 Hallam, Const. Hist. 122. Archbishop Temple in one of his charges seemed to think that no penalties would attach to the teaching of consubstantiation by the clergy, but if (as is believed) it involves the ubiquitous corporal presence against which our Black Rubric is directed, it is difficult to see how his view can be correct. *See* ARTICLES.

(*n*) Declaration of Kneeling in Prayer Book, Art. 28; *Sheppard* v. *Bennett*, cited under ARTICLES.

Spiritual presence is the only doctrine which may be taught in our Church. The body of Christ is given, taken, and eaten, in the Supper only after a heavenly and spiritual manner, and by means of faith. Some who press the sacrament or symbol with their teeth do not partake of Christ; on the other hand, there are some who eat the body and drink the blood without partaking of the sacrament (*o*). The Church, therefore, clearly teaches that the outward visible sign, and the inward spiritual grace, are not necessarily and inseparably connected. It is also clearly laid down that "any presence which is not a presence to the soul of the faithful receiver" the Church does not, by her articles and formularies, affirm or require her ministers to accept. This cannot be stated too plainly (*p*). It is not, however, penal for a clergyman to assert that such spiritual presence is "real, essential, objective" (and the presence may legally be described as a "real spiritual presence," or as a "real presence," spiritual being understood), but such phraseology has been characterized by the Privy Council as "rash and ill-judged, and perilously near a violation of the law." The expression certainly is misleading, "real presence" being synonymous throughout the whole of Christendom with "corporal presence."

In a spiritual sense, the presence of Christ, when two or three are gathered together in His holy name, is "real," as also is the universal presence of the Deity. In such a "real presence" the entire Christian Church believes.

PRESENTATION. The right of presentation and that of nomination to a church are distinct things. Presentation is the offering a clerk to the bishop, nomination the offering a clerk to the patron; *e.g.*, where the legal estate is in trustees, the trustees present on the nomination of the *cestuis que trustent* (*q*). So, in the case of a mortgagee of an advowson,

(*o*) Communion of the Sick Rubric. *See* LORD'S SUPPER.

(*p*) *Sheppard* v. *Bennett*, at p. 406, *ubi sup.*

(*q*) See *Welch* v. *Peterborough* (1885), L. R. 15 Q. B. D. 432.

the mortgagee presents, but only on the nomination of the mortgagor (*r*).

All presentations must be in *writing* (*s*), but it seems that they need not be under seal. No particular form is necessary; a letter to the bishop is sufficient. Forms are, however, given in the books of conveyancing precedents (*t*). In cases where the clerk to be instituted is himself patron, the proper course is to petition the bishop to admit and institute him. If the instrument of presentation is drawn by the bishop's secretary or the registrar of the dean and chapter, he is entitled to charge a fee of 2*l.* 2*s.*; in the case of a perpetual curacy, 1*l.* 1*s.* (*u*). No other fee is payable on a presentation or donation, and no stamp duties are now payable (*x*). A presentation, though duly made in all respects, may be revoked or varied at any time before institution, as it confers no interest whatever, and where the Crown is patron, at any time before induction (*y*).

Presentation must be made within six calendar months after the patron has notice of the vacancy, otherwise the right lapses to the bishop (*z*). A second presentation of a clerk refused by the bishop, is void (*a*). (As to who may present and be presented, *see* ADVOWSON; and as to the bishop's right of refusal, *see* INSTITUTION.)

The sale of single presentations will, under the Benefices Act, 1898, soon cease to be possible. (*See* ADVOWSON.)

PRIEST, Prester or Presbyter (Gr. πρεσβύτερος, an elder). One of the holy orders recognized by nearly every Church, either under the name of priest or minister. By 13 Eliz. c. 12, none can be made minister (which here means priest) unless it appear to the bishop that he is of honest life

(*r*) Cruise, vol. iii. p. 3.
(*s*) Statute of Frauds, 29 Car. 2, c. 3, s. 4.
(*t*) Robbins' Bythewood, vol. vi., p. 848, and note.
(*u*) Statutory Rules and Orders, 1908, p. 316. *And see* FEES.
(*x*) See Stamp Act, 1891, and 40 & 41 Vict. c. 13, s. 13, since repealed.
(*y*) Cruise, vol. iii. p. 12.
(*z*) *Ibid.* p. 13. *And see* LAPSE.
(*a*) Benefices Act, 61 & 62 Vict. c. 48, s. 6 (1), (2).

and professeth the doctrine expressed in the Thirty-nine Articles (*b*), nor unless he is able to answer and render the ordinary an account of his faith in Latin according to the said Articles, or have special gift or ability to be a preacher. He must be twenty-four years of age, "complete," and no dispensation from this can be obtained (*c*). (As to the requisites for ordination, *see* ORDERS.) Only a priest can administer the Lord's Supper, and only a priest is eligible for a benefice or any of the higher offices in the Church of England (*d*), but he has no authority to ordain ministers (*e*). The use of the word "priest" in the rubrics does not mean that only a priest can perform the various portions of the Service to which the word is prefixed, but merely that a priest is to do so *if possible* (*d*). "Priest" and "bishop" originally designated the same individual (*f*).

PRISON CHAPLAIN. A clergyman of the Established Church must be appointed, by the Secretary of State, as chaplain to every prison. An assistant chaplain, being also a clergyman of the Established Church, may be appointed if required, the appointment being made by the Prison Commissioners, subject to the control of the Secretary of State (*g*). The same person may officiate in two prisons if such prisons are within a convenient distance of each other, and are calculated to receive not more than 100 prisoners. No chaplain of two prisons, or of one prison in which the average number of prisoners confined at any one time during the three years next before his appointment has not been less than 100, can hold a benefice or curacy (*h*). Notice of the appointment must be given to the bishop within one month, and the chaplain or assistant chaplain must be duly

(*b*) This has been modified by the Clerical Subscription Act of 1865. *See* ARTICLES.

(*c*) Preface to Ordinal, confirmed by 44 Geo. 3, c. 43.

(*d*) *See* ABSOLUTION.

(*e*) *St. Albans* v. *Fillingham*, [1906] P. 163.

(*f*) *See* BISHOP.

(*g*) 28 & 29 Vict. c. 126, ss. 10, 12; 40 & 41 Vict. c. 21, ss. 5, 9.

(*h*) 28 & 29 Vict. c. 126, s. 11.

licensed by him (*i*). Such chaplains (as prison officers) are entitled to a superannuation allowance not exceeding two-thirds of the emoluments, after twenty years' service (*k*), if incapacitated, or over sixty years of age; or to a gratuity not exceeding the amount of his salary and emoluments for one year. And if his office is abolished, he is entitled to be dealt with under the Superannuation Act, 1859 (*l*). Ministers not of the Established Churches of England and Scotland are also allowed to visit prisoners under certain restrictions (*m*).

PROCESSIONS. Where a procession in church is conducted so as to form a further rite or ceremony in connection with and forming part of the rites and ceremonies of public worship, *e.g.*, immediately before or immediately after Morning or Evening Prayer, it is illegal (*n*). On other occasions, whether in church or out of doors, it may be doubted whether there is any objection, unless the bishop vetoes it. The only recognized procession is "beating the bounds" (*o*). A procession through the streets of the Salvation Army with bands of music is not an unlawful assembly in itself (*p*), and cannot be made so by a municipal bye-law (*q*), although it may consist of a very considerable number of persons (over 100). The same rule would, no doubt, apply to any other body of Protestants (but not Roman Catholics (*r*)) *bonâ fide* assembled for religious purposes; and lately there have been instances of Church of England processions through the streets carrying banners and pictures. It has also been held that any such procession

(*i*) *Ibid.* s. 13.

(*k*) This includes prison service under Army Acts, 1879 and 1881, and Naval Discipline Act: see 49 & 50 Vict. c. 9.

(*l*) 40 & 41 Vict. c. 21, s. 36; 41 & 42 Vict. c. 63; 49 & 50 Vict. c. 9.

(*m*) See, as to this and other religious regulations in prisons, 26 & 27 Vict. c. 79, ss. 2—4; sects. 44—52 of the schedule to 28 & 29 Vict. c. 126.

(*n*) *Elphinstone* v. *Purchas* (1870), 3 A. & E. 67.

(*o*) *See* ROGATION DAYS.

(*p*) *Beatty* v. *Gillbanks* (1882), 9 Q. B. D. 308.

(*q*) *Johnson* v. *Croydon* (1886), 16 Q. B. D. 708. *See* LORD'S DAY.

(*r*) 10 Geo. 4, c. 7, s. 26.

does not become unlawful merely because the procession is, and the processionists know that it is, likely to lead to a breach of the peace (*s*); but in recent cases the above decision has been criticised (*t*) and explained in a contrary sense.

There is no general right of meeting on the public highway (*u*). A religious meeting or service may be held in the street, except in crowded places when forbidden by the local authority (*x*). (*See* PUBLIC MEETING.)

PROCTOR, or PROCURATOR. Proctors in Ecclesiastical Courts discharge duties similar to those of solicitors in other Courts (*y*). Now any solicitor may act as a proctor (*z*), and (since 1857) any barrister as an advocate (*a*). (As to proctors in Convocation, *see* CONVOCATION.)

PROCURATIONS were, in their origin, refreshments provided for the bishop or archdeacon by the incumbents of outlying parishes, when visited. They were afterwards commuted into fixed money payments, charged upon the benefice. Many of these charges still remain and are payable by the incumbent to the archdeacon (*b*) apparently irrespective of visitation; others have been released. The only visitation fees now payable are those mentioned in the statutory order (*c*). Bishop's procurations seem to have lapsed.

(*s*) *Beatty* v. *Gillbanks* (1882), 9 Q. B. D. 308; *Eastbourne Case* (1892).

(*t*) *Wise* v. *Dunning*, [1902] 1 K. B. 167, a case decided under a local (Liverpool) Act. It would seem that persons promulgating lawful views at a lawful meeting ought to be protected. The opponents, by whom only the breach of the peace is caused (see 9 Q. B. D. at p. 314), need not have attended the meeting. It is otherwise when the procession or meeting is in itself illegal and held contrary to statute law: *Ex p. Wise* (1909), 26 T. L. R. 8; *O'Kelly* v. *Harvey* (1883), 15 Cox, C. C. 435; 14 Ir. L. R. 105; *Reg.* v. *Londonderry* (1891), 28 L. R. Ir. 440; *Reg.* v. *Cork* (1882), 15 Cox, C. C. 149.

(*u*) See Dicey on the Constitution, App., note 5.

(*x*) *Burden* v. *Rigler*, [1911] 1 K. B. 337.

(*y*) Burn; and see Cans. 129—133.

(*z*) 40 & 41 Vict. c. 25, s. 17. Solicitors are responsible for the Court fees: *Pearson* v. *Stead*, [1903] P. 66.

(*a*) *Mouncey* v. *Robinson* (1867), 37 L. J. Ecc. 8.

(*b*) See *Shepherd* v. *Payne* (1862), 31 L. J. C. P. 298, which contains a statement as to the practice in Essex. The author is informed by Mr. Registrar T. W. Hansell that there is also a judgment of Chancellor Evans in Norwich Consistory on this subject.

(*c*) *See* FEES; VISITATION; SYNODALS.

PROHIBITION. This writ is framed in order to keep the various Courts within the bounds of their several jurisdictions. It generally issues out of the High Court of Justice, King's Bench Division, from which there is an appeal in the usual way (*d*), and is directed to the judge of and parties to an action, commanding them to cease from the prosecution thereof. No action pending in any division of the Supreme Court itself can be restrained by prohibition or injunction (*e*); but an action in any other Court, and consequently in the Ecclesiastical Courts, may. It has been thought by some that this applies to the Judicial Committee of the Privy Council, but the better opinion is that the Supreme Court has no power, and in any case it is not likely to venture to prohibit such an august tribunal (*f*).

Prohibitions to the Ecclesiastical Courts have been granted from the earliest times (*g*).

The jurisdiction in prohibition does not enable the temporal Court to act as a Court of Appeal (*h*).

PROTESTANT. A name given to those Western Churches which protested against the errors of the Church of Rome in the 16th century. They include the Churches of England, Scotland, Ireland, Germany, Holland, Denmark, and Sweden and Norway. Some are episcopal, and some presbyterian. The name is also adopted by all Churches holding similar views. (*See* CHURCH.)

PROTESTANT SUCCESSION. In 1701, when the Crown of England was settled on the Princess Sophia and the heirs of her body, it was enacted by the Act of Settlement

(*d*) See *Lister* v. *Wood* (1889), 23 Q. B. D. 229. Formerly there was no appeal, and if the prohibition was supposed to be granted on insufficient grounds, a writ of consultation was taken out, as to which see *Fuller's case* (c. 1611), 12 Rep. 41; *Statutum de Consultatione*; and for forms, *Registrum Brevium*, 1687, pp. 44—58.

(*e*) Jud. Act, 1873, s. 24 (5).

(*f*) See Shortt on Informations, &c. p. 429, for the cases in which a prohibition will lie.

(*g*) *Ibid.* p. 463.

(*h*) See Shortt on Informations, &c., p. 470; and see as to procedure, *ibid.* pp. 485 *et seq.*

that whosoever should thereafter come to the possession of the Crown should be a Protestant, and though not required to be a member of the Church of England (*i*) should join in the Communion of the Church of England as by law established, and should marry no one but a Protestant (*k*). In order to secure that the sovereigns are not personally and secretly Roman Catholics, they are required by the Bill of Rights and Act of Settlement to make a Protestant Declaration on accession, *i.e.*, at the first meeting of the first Parliament next after coming to the Crown (*l*).

The form of the Declaration, as altered in 1910, is as follows:—

I (*name of Sovereign*) do solemnly and sincerely in the presence of God profess, testify and declare that I am a faithful Protestant, and that I will according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm uphold and maintain the said enactments to the best of my powers according to law (*m*).

(*i*) William III., George I., and George II. were members of other Protestant Churches.

(*k*) Act of Settlement, 12 & 13 Will. 3, c. 2. See *Roman Catholic Disabilities*, by the Author, published by Church Association.

(*l*) Bill of Rights (1688), 1 W. & M. sess. 2, c. 2, and Act of Settlement, *ubi sup.*

(*m*) 1 Geo. 5, c. 29. The declaration taken by preceding monarchs was the usual declaration against transubstantiation, which runs as follows:—"I (A. B.) do solemnly and sincerely in the presence of God profess, testify and declare, That I do believe that in the Sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ at or after the consecration thereof by any person whatsoever; (2) And that the invocation or adoration of the Virgin Mary or any other saint, and the sacrifice of the mass, as they are now used in the Church of Rome, are superstitious and idolatrous; (3) And I do solemnly in the presence of God profess, testify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English Protestants, without any evasion, equivocation or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the Pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration or any part thereof, although the Pope, or any other person or persons or power whatsoever, should dispense with or annul the same, or declare that it was null or void from the beginning" (30 Car. 2. st. 2). It will be seen that this declaration is no more forcible than the Thirty-nine Articles and Black Rubric, upon which it is founded, or the Scotch Confession of Faith.

By the English Coronation Oath the sovereign swears to maintain "the Protestant Reformed Religion established by Law" (*n*).

The Scotch Coronation Oath is taken by the successor (in the Privy Council) immediately after the death of a sovereign (*nn*), and is in the following form:—

I, George V., King of the United Kingdom of Great Britain and Ireland, Defender of the Faith, do faithfully promise and swear that I shall inviolably maintain and preserve the settlement of the true Protestant Religion (*o*), with the Government, Worship, Discipline, Rights and Privileges of the Church of Scotland as established by the laws made there in prosecution of the Claim of Right (*oo*), and particularly by an Act intituled an Act for securing the Protestant Religion and Presbyterian Church Government, and by the Acts passed in the Parliament of both Kingdoms for Union of the two Kingdoms. So help me God (*p*). (*See* SOVEREIGN, note (*u*).)

PROVINCE. (*See* ARCHBISHOP.)

PUBLIC MEETING. A public meeting or religious service held in a public place or on a highway is *primâ facie* a lawful meeting. But it may become unlawful if forbidden by the local authorities on the ground of obstruction or otherwise (*q*). By the Public Meetings Act, 1908, any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called, is liable, on summary conviction, to a fine of 5*l*. or one month's imprisonment, and any person inciting others is guilty of a like offence (*r*).

(*n*) 1 W. & M. sess. 1, c. 6.

(*nn*) Act of Union, 6 Anne, c. 11 (or 5 Anne, c. 8), s. 4.

(*o*) The true Protestant Religion here referred to is contained in the "Confession of Faith," ratified by Scotch Act, 1 W. & M. c. 5, and which contains statements of doctrine similar to, but more forcible than, the Thirty-nine Articles of the Church of England.

(*oo*) For the terms of the Claim of Right, see Acts of the Parliament of Scotland (1689), vol. ix., pp. 38—40, and Walsh's *King's Scottish Coronation Oath*.

(*p*) Parl. Paper, 1901, No. 188.

(*q*) *Burden* v. *Rigler*, [1911] 1 K. B. 337. *See* PROCESSIONS.

(*r*) 8 Edw. 7, c. 66. There are additional penalties at election times.

PUBLIC WORSHIP (*s*). At the Reformation it was thought desirable to have one uniform Service Book in the native tongue (*t*). Up to the year 1871 no departure from the order or form of Common Prayer was allowed, but since then various deviations have been authorized by Parliament.

By the Prayer Book (Table of Lessons) Act, 1871, by which new lessons (*u*) are appointed (including portions of the Apocrypha), it is enacted that upon occasions to be approved by the ordinary, other lessons and other Psalms than those appointed in the Psalter and calendar may, with his consent, be substituted if he should judge that such alteration would conduce to edification.

By the Act of Uniformity Amendment Act, 1872, a shortened order for Morning and Evening Prayer was introduced, and is set forth in the schedule to the Act. This form may be used on any day except Sunday, Christmas Day, Ash Wednesday, Good Friday, and Ascension Day; if in a cathedral, in addition to, and if in a church, in lieu of, the usual form (sect. 2). This shortened form comprises what is known as the "Order for Morning Prayer," or "Evening Prayer," with the omission, at the minister's discretion, of all or any of the following portions, viz.:—All the appointed Psalms, except one; one of the lessons (unless there are two proper lessons for the day, when both must be read); the lesser Litany and the Lord's Prayer following the Creed; the prayers for the King's Majesty, the Royal Family, the clergy and people. Each section of the 119th Psalm is deemed to be a separate Psalm. The Act also directs that upon any special occasion there may be used in any cathedral or church a special form of service approved by the ordinary, but there must not be introduced into it anything (except anthems or hymns) which does not form part of the Holy Scriptures or the Book of Common Prayer

(*s*) For the distinction between Public and Private Worship, *see* CONGREGATION.

(*t*) *See* PRAYER BOOK.

(*u*) A list of these is now printed in the Prayer Book. *See* BIBLE.

(sects. 3, 4) (*x*). The order for Morning Prayer, the Litany, and the Communion Service may be used as separate services, either together or in varying order, and the Litany may be said after the third collect at Evening Prayer, either in lieu of or in addition to the use of the Litany at Morning Prayer, but without prejudice to any legal powers vested in the ordinary; and any of the said forms of service may be used with or without a sermon, lecture, or homily (sect. 5). A sermon or lecture may be preached without a previous Prayer Book Service, but, if so, it must be preceded by a service authorized by the Act, or by a bidding prayer (*q. v.*), or by a Prayer Book Collect, with or without the Lord's Prayer (sect. 6). An additional form of service varying from any Prayer Book form may be used at any hour, on any Sunday or Holy Day, in any cathedral or church in which the Morning and Evening Prayer, the Litany, and the ante-Communion Service are duly read at some other hour or hours, so that there be not introduced into such additional service any portion of the Communion Service, or anything (except anthems or hymns) which does not form part of the Holy Scriptures or Prayer Book, and so that such form of service, and the mode in which it is used, is for the time being approved by the ordinary; provided that nothing in this section shall affect the use of any portion of the Prayer Book as otherwise authorized by the Act of Uniformity or this Act (sect. 4).

In the ordinary services the custom was to take the Morning Prayer, Litany, and the former part of the Communion Service one after the other on Sunday morning, with sermon and a collection, and Evening Prayer included a sermon and collection.

The precise hours for the services are not fixed, the minister

(*x*) "Form part of" has always been taken to mean "form part of the text of." But Archbishop Temple broached the opinion that it excludes only such a service as "expresses any doctrine which you cannot find the substance of either in the Bible or the Book of Common Prayer." See Letter of Sir William Harcourt to *Times*, August 15th, 1898.

being allowed to use his discretion, subject to the intervention of the bishop in case of dispute. The churchwardens have no power in the matter.

By the Universities Tests Act, 1871, special abridgments and adaptations of the Morning and Evening Prayers may be adopted in university chapels, but on week-days only.

Also, by the Burial Laws Amendment Act, 1880, a clergyman may, in any case where the office for the burial of the dead may not be used, and in any other case at the request of the person responsible for the burial, use at a burial such service, consisting of prayers taken from the Book of Common Prayer and portions of the Holy Scriptures, as may be approved by the ordinary (*y*). Except under these statutes, the Prayer Book forms and ceremonies (*z*) must not be departed from: and small deviations, *e.g.*, omitting part of a verse, are theoretically equally punishable with great deviations (*a*). A clergyman, therefore, who wilfully deviates from the proper form is liable to be criminally indicted or to be prosecuted in the Ecclesiastical Courts. Also, it would seem that the duties become thereby inadequately performed, thus giving the bishop another method of interfering under the Pluralities Acts, 1838 and 1885, and Benefices Act, 1898 (*b*).

Common Prayer is to be said or sung distinctly and reverently upon Sundays and holidays and their eves, and at convenient and usual times of those days, and at such place of every church as the ordinary shall appoint (*c*). The Litany must be sung or said on Sundays, Wednesdays, and Fridays, and at other times when it is commanded by the ordinary (*d*). It is not considered that the words "the order of Morning and Evening Prayer *daily* to be said and used throughout the year" mean *every day*, though that would certainly seem to be the natural construction, and is in accord

(*y*) *See* BURIAL.
(*z*) *See post*, RITES AND CEREMONIES.
(*a*) See *Newberry* v. *Godwin* (1811), 1 Phill. R. 282.
(*b*) *See* CLERGY, Duties.
(*c*) Cans. 13 and 14.
(*d*) Rubric, and Can. 15.

with the preface to the Prayer Book (*e*); but it would contradict Canons 13 and 14, referred to above. The Pluralities Act, 1885, seems also to imply that services on *Sundays and holidays* are all that are necessary (*f*).

It has been held that the ordinary has power to approve relaxations from duty owing to the circumstances of the parish (*g*), but no statute was cited giving the bishop any such power.

The bishop may in his discretion direct that there shall be two full services in every *benefice*, each with a sermon or lecture on every Sunday (*h*), and a third or additional service on Sundays and great festivals (*i*).

The former regulation also applies to every parish or chapelry where the income of the benefice arising from that parish or chapelry amounts to 150*l*., and the population of that parish or chapelry to 400 (*h*). But it has been held that where there are two churches in one benefice, although the bishop may apportion the services between them, the incumbent cannot be made to perform all the usual services in both (*k*). Where there are two incumbents of one benefice, the bishop may apportion the duties between them, if no cause is shown to the contrary (*l*).

No proclamation or public notice of a vestry or other matter, except banns and purely ecclesiastical notices, may be made in any church or chapel during Service or at the door after Service. Public notices are to be affixed to the church doors (*m*).

Language.—Generally speaking, English must be used in England, and Welsh in Wales. As to other languages, the rules stated under BIBLE apply to the Prayer Book, save that it would seem the Communion Service may not

(*e*) "Concerning the Service of the Church," last three paragraphs.
(*f*) *See* CLERGY, Duties. *In re Hartshill* (1861), 30 Beavan, 130.
(*g*) *Bennett* v. *Bonaker* (1828), 2 Hagg. Ecc. R. 27.
(*h*) 1 & 2 Vict. c. 106, s. 80.
(*i*) 58 Geo. 3, c. 45, s. 65.
(*k*) *Rugg* v. *Winchester* (1868), L. R. 2 P. C. 223.
(*l*) 2 & 3 Vict. c. 30.
(*m*) 1 Vict. c. 45; Rep. as to Isle of Man.

(in England) be read in any language other than Latin or English (*n*).

Lay Ministrations.—In an *unconsecrated* place of worship, the Services of the Church of England may be read by any layman.

In a *consecrated* church or chapel there seems to be no rule of law to prevent a layman reading Morning and Evening Prayer, the Litany, and the greater portion of the Communion Service in the absence of an ordained minister, or at services additional to those required by law (*o*); and formerly this was frequently done in churches or chapels where there was only a small endowment, to the end (as Dr. Burn says) that Divine Service in such places might not altogether be neglected.

For the same reason it would, no doubt, also be held legal for a minister who suddenly loses his voice, or who for any unforeseen reason cannot read the Service, to delegate the task to a layman. But in an ordinary case, where a priest or deacon stands up to conduct the Service in a consecrated church, it is his statutory duty to read the *whole* of it himself (*p*) (except, of course, such parts as properly fall to the choir and congregation); and it would seem that he may not, even with the bishop's licence, delegate portions of it, such as the Litany, and the Lessons, to a layman, except by custom. For, as previously remarked, a sufficiently ancient and universal post-Reformation custom will, in some cases, be held to form the true interpretation of a statute, as in the case of vestments (*q. v.*).

It would seem, therefore, that the only safe rule which can be laid down is that the clergyman must perform the whole service himself, and that he is less justified in delegating to a layman the absolution, versicles, and (save by custom) the

(*n*) 2 & 3 Edw. 6, c. 1, s. 6; 13 & 14 Car. 2, c. 4, s. 18.

(*o*) The Act of Uniformity only makes it penal for a layman or deacon to consecrate and administer the Lord's Supper, or hold a benefice.

(*p*) 13 & 14 Car. 2, c. 4, s. 2, and Preface to the Prayer Book. *And see* CLERGY, Ecclesiastical Duties; *and* ABSOLUTION.

lessons, than any other parts of the Service; but that in grave temporary emergencies he may delegate the whole Sunday Service, except the consecration and administration of the Lord's Supper, to a layman; save that in order to *preach* the sermon such layman must be licensed by the bishop, otherwise he may only read a sermon prepared or approved by the incumbent or a homily. In all cases of lay ministrations of a permanent character, the licence of the bishop ought to be obtained.

It has been argued that in these matters the rubrics in the Prayer Book are the only guide, and that where there is a direction for a priest or minister to read a certain prayer, *only* a priest or minister can read it, and that where no direction is given as to who is to officiate, a layman may do so. This method of construction has been adopted, because it is supposed to authorize the reading of the lessons by a layman, but it is much more in favour of his reading the Litany, sermon, and various collects and prayers. Thus, the rubric preceding the Litany simply says that it is to be "sung or said," and that relating to the sermon, "then shall follow the sermon or one of the homilies, &c." (*q*); but in the case of the lessons, the *minister* is specially directed to say, "Here beginneth such a chapter, &c." before every lesson, and after every lesson, "Here endeth the first or the second lesson," and "he that readeth (formerly 'the minister that readeth') is so to stand and turn himself, &c." The natural construction of this passage undoubtedly is that the minister is to read the lesson, the only argument to the contrary being the change of the word "minister" into "he" (not into "minister or layman") in one part of the rubric (*r*). To all this a certain amount of weight is due, but in any case it is clear that only the *minister* can say the "Here beginneth"

(*q*) It may here be noted that no sermon is directed by the Prayer Book at Morning or Evening Prayer. It depends on the Act of Uniformity. *See* PREACHING.

(*r*) It may be observed that the word minister was not left in the rubric by a "slip." The "note" was entirely re-written. See facsimile copy of the amended Prayer Book, published by Longmans, 1871.

and "Here endeth." The fact that the *priest* is directed to read the Gospel and Epistle at the Communion Service (contrary to mediæval practice) seems also to show that the clergy were intended to read the Word of God themselves. This also appears from the ordination vows. And as a matter of principle it would seem that the Reformers were right; for it is difficult to see why the lessons from Holy Scripture, which are certainly not the least sacred parts of the Service, should be selected as peculiarly suitable for a layman to read. If, however, it should be held, otherwise than on the ground of custom, that a clergyman can at any time legally delegate the reading of the lessons to a layman, it would seem to follow *à fortiori* that he may similarly delegate various other parts of the service as before mentioned. Instances of the difficulty of this method of construction are given under ABSOLUTION; and there cannot be any reasonable doubt that the order of performance of Divine Service depends on the Act of Uniformity itself, and that the rubrics are directory only.

It will be useful to compare with the above statement of the law the rules as to lay ministrations in the primitive church as summed up by our greatest authority on the subject. He says: "The existing evidence tends to show that laymen, no less than officers, could, upon occasion, (1) teach or preach, (2) baptize, (3) celebrate the Eucharist, (4) exercise discipline. The inference is that although the officers had, as such, a prior right, they had not an exclusive right to the performance of any ecclesiastical function" (*s*).

Rites and Ceremonies.—A ceremony is thus distinguished from a rite. Rites consist of services expressed in words, while ceremonies consist in gestures or acts preceding, accompanying or following the utterance of words, including the use of lights, incense, and vestments (*t*). The following definitions have also been given: "The word '*rite*' is held

(*s*) Dr. Hatch, Bampton Lectures, p. xix.

(*t*) *Per* Sir R. Phillimore. See Phill. Burn, p. 900.

to include, if not to consist of, the text of the Prayers and Scriptures read; the books called 'rituals' containing these, while the books called 'ceremonials' prescribe the mode of using the rites or conducting the Service." "A *ceremony* in worship is an action or act in which material objects may or may not be used, but is not itself any material object" (*u*).

In the performance of the rites and ceremonies ordered by the Prayer Book, the directions contained in it must be strictly observed; no omission and no addition can be permitted, for the Prayer Book in the preface divides all ceremonies into two classes; those which are retained are specified, whereas none are abolished specifically or by name; but it is assumed that all are abolished which are not expressly retained (*v*). Hence it is, that although crosses or banners may be lawful decorations in a church, they become unlawful when used in the way of ceremony. Processions (*q. v.*), "mixing the chalice," bowing, kneeling, genuflection or prostration (unless expressly directed), form an additional and unlawful ceremony (*x*). So, also, turning to the East during the creeds; and singing "Glory be to thee, O God, for this thy Holy Gospel" after the Gospel; ancient and continuous post-Reformation custom, however, if it could be proved, might preserve some of these ceremonies from condemnation. Such practice, however, as kissing books and stoles, using holy water, and ashes at the Commination Service (*y*), and ceremonial ablutions, are undoubtedly illegal (*u*).

Ritual.—The elaborate ritual of the Jewish Church was not continued by the Christians generally, though some of its rites, *e.g.*, circumcision, still prevail in the Coptic, and perhaps other Eastern Churches. The services of the early

(*u*) *Read* v. *Bishop of Lincoln*, [1891] P. 79, 80. *And see* LORD'S SUPPER.

(*v*) *Martin* v. *Mackonochie* (1868), L. R. 2 P. C. 365, 388.

(*x*) *Ibid.* p. 392. For an authority to the contrary, see *Burder* v. *Hale* (1849), 6 N. of C. 620, in the Chancery Court of York, and Can. 18.

(*y*) See L. R. 3 A. & E. 97, 108.

Christians are supposed to have been marked by the utmost simplicity, but later on, as the Church became more and more corrupt, rites and ceremonies, mostly borrowed from the Pagans, increased and multiplied. Thus, Mosheim says: "No sooner had Constantine the Great abolished the superstitions of his ancestors than magnificent churches were everywhere erected for the Christians, which were richly adorned with pictures and images, and bore a striking resemblance to the Pagan temples, both in their outward and inward form. The rites and institutions by which the Greeks and Romans and other nations had formerly testified their veneration for fictitious deities were now adopted, with some slight alterations, by Christian bishops in the service of the true God. Hence it happened that in the third and fourth centuries the religion of the Greeks and Romans differed very little in its external appearance from that of the Christians. They had both a most pompous and splendid ritual, gorgeous robes, mitres, tiaras, wax-tapers, croziers, processions, lustrations, images, and gold and silver vases; and many such circumstances were equally to be seen in the heathen temples and Christian churches" (*z*). The Church of England, at the Reformation, made a clean sweep of most of these ceremonies, justly considering that it had authority to ordain, change, and abolish ceremonies or rites ordained only by man's authority (*a*). There is a strong wish in some quarters at the present time to return to the barbaric splendour of mediæval Christianity, and in fact there are now in existence some Church of England places of worship into which the vast majority of the members of the Church cannot conscientiously enter. Such practices obviously destroy the unity of the Church, and bring to the front the question whether the Church of England, as a national Church, ought not to consist of a *federation of sects*, each being allowed to make its

(*z*) Ecc. Hist. cit. Rogers, Ecc. Law; and see Homily against Peril of Idolatry and Superfluous Decking of Churches, Part 3.

(*a*) Art. 34.

own rules and conduct its worship in its own way. In this course there are many advantages. If, however, it is thought desirable that the congregations of the Church should be kept together, it is difficult to see how it can be done except by rigidly insisting on the ritual, which has been legal and customary for the last 300 years, and which has successfully concealed the grave differences of opinion on doctrinal questions which underlie it. The rule of the Church has hitherto been, that "things of themselves indifferent do in some sort alter their natures when they are either commanded or forbidden by a lawful magistrate, and may not be omitted at every man's pleasure contrary to the law, when they be commanded, nor used when they are prohibited" (*b*). The late Archbishop Benson (in spite of his judgment in the *Lincoln Case*) seemed also to be of this opinion, for he said: "The Church has a right to ask that her congregations may not be divided."

PUBLIC WORSHIP REGULATION ACT, 1874 (*c*), provides a simpler procedure for correcting certain ecclesiastical offences, but does not repeal the Church Discipline Act, 1840 (*q. v.*), or any jurisdiction which was in force at the date of the passing of the Act for the due administration of the ecclesiastical law (sect. 5). A conviction may therefore be obtained either under the Church Discipline Act or the Public Worship Regulation Act, but not under both (sect. 18) (*d*). The offences for which proceedings may be taken under this Act are:—

Altering or adding to the fabric, ornaments, or furniture of a church without lawful authority, or introducing any decoration forbidden by law; or

Using or permitting to be used any unlawful ornament of the minister of the church, or neglecting to use any prescribed ornament or vesture;

(*b*) Can. 30.

(*c*) For rules and orders under this Act, see authorized Index.

(*d*) See 4 Q. B. D. 563.

Failing to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance of the services, rites, and ceremonies, or making or permitting to be made any unlawful addition to, alteration of, or omission from such services, rites, and ceremonies (*e*).

No proceedings can be taken under this Act as regards any alteration in or addition to the fabric of a church, if such alteration or addition has been completed five years before the commencement of such proceedings, and in the case of illegal vestments and ceremonies the offence must not be more than twelve months old (*e*).

The proceedings are taken *against* the "incumbent" or "person complained of" (*f*). They may be *instituted* by the archdeacon or a churchwarden or any three parishioners, who must be male persons of full age who have signed and transmitted to the bishop under their hands a solemn declaration that they are members of the Church of England as by law established (*g*), and who have for one year next before taking any proceeding under the Act had their usual place of abode in the parish (*h*) in which the church or burial ground is situate, or in the case of cathedral or collegiate churches by any three inhabitants of the *diocese* similarly qualified (*i*).

Method of commencing proceedings is by filling up and sending to the bishop (at the diocesan registry (*k*)) the following form:—

(*e*) 37 & 38 Vict. c. 85, s. 8.

(*f*) *Ibid.* ss. 8 and 9; and see definitions of terms in sect. 6.

(*g*) It is not quite clear what is meant by the word "member." There are "nominal" members and "communicating" members. All Protestant Dissenters (*q. v.*) also are "members" for certain purposes. The question has been recently discussed in *Re Perry Almshouses*, [1899] 1 Ch. 21, in which it was held that a gift for persons who shall be constant worshippers at a Church of England church and partakers of the Holy Communion there, is intended for members of the Church of England only.

(*h*) As to "Interest," see ECCLESIASTICAL COURTS.

(*i*) 37 & 38 Vict. c. 85, s. 8.

(*k*) See Rules and Orders under the Act.

Public Worship Regulation Act, 1874.

To the Right Rev. Father in God, *A.*, by Divine permission Lord Bishop of *B.*

I, [We] *C. D.*, Archdeacon of the Archdeaconry of , [*or* a churchwarden *or* three parishioners of the parish of *E.*,] in your Lordship's diocese, do hereby represent that [*the person or persons complained of*] has or have [*state the matter to be represented; if more than one, then under separate heads*].

Dated this day of , 19 .

(Signed) *C. D.*

This form must be accompanied by a statutory declaration affirming the truth of the statements, and also by the above-mentioned declaration as to membership of the Church of England. If the bishop is patron he cannot act (*l*).

Bishop's Veto.—The bishop may, after considering the whole circumstances of the case, stop the proceedings, in which case he must state in writing the reason for his opinion and such statement must be deposited in the registry of the diocese, and a copy thereof transmitted to the person making the representation and to the person complained of (sect. 9). If the bishop does veto the proceedings there is no appeal from his decision, and no relief is obtainable by mandamus; for it has now been held by the House of Lords in the *London Reredos Case*, that the bishop's discretion under this section is *absolute* (*m*). There is a great safeguard, however, in the requirement that the bishop must publicly state his reasons; for, assuming that a bishop would stoop to screen a clergyman from the consequences of some undoubtedly illegal act wilfully committed, he would find it difficult to give a satisfactory reason. The exercise of the discretion is therefore only likely to arise on *moot points*, such as that involved in the *London Reredos Case* (*n*). The abolition

(*l*) As to where he is patron, see *post*.

(*m*) *Allcroft* v. *Bishop of London*; *Lighton* v. *Bishop of London*, [1891] A. C. 666.

(*n*) In the Court of Appeal it was thought that the bishop was not at liberty to set any law of the land at defiance, and that if he did so a *mandamus* would lie. See remarks of Lindley, L. J., *Reg.* v. *Bishop of London* (1889), 24 Q. B. D. at p. 237;

of the veto has been recommended by the Royal Commission on Ecclesiastical Discipline (*nn*).

Further Proceedings.—If the bishop does not veto the proceedings, he must, within twenty-one days after receiving the representation, transmit a copy to the person complained of, and require such person and also the person making the representation to state in writing, within twenty-one days, whether they are willing to submit to his directions without appeal; and if they state their willingness to do so, the bishop forthwith proceeds to hear the matter in such manner as he thinks fit. But no judgment so pronounced by the bishop shall be considered as finally deciding any question of law so that it may not be again raised by other parties. The parties may, at any time after the making of a representation to the bishop, join in stating any questions arising in such proceedings in a special case, signed by a barrister-at-law, for the opinion of the judge under the Act; and the parties, after signing and transmitting the same to the bishop, may require it to be transmitted to the judge for hearing; and any judgment pronounced by the bishop shall be in conformity with the determination of the judge.

If the parties do not state their willingness to submit to the directions of the bishop, the bishop must forthwith transmit the representation in the mode prescribed by the rules and orders to the archbishop of the province, and the archbishop must forthwith require the judge to hear the matter of the representation at any place within the diocese or province, or in London or Westminster (*o*).

The judge has power to issue such monition and to make such order as to costs as the judgment may require; and an appeal lies in the form prescribed by rules and orders to His Majesty in Council (*p*).

and also those of Lord Bramwell in H. L., *ubi sup.*, p. 679.

(*nn*) Report of 21 June, 1906, p. 70.

(*o*) London means "city of London." See *Hudson* v. *Tooth* (1877), 3 Q. B. D. 46.

(*p*) 37 & 38 Vict. c. 85, s. 9, *q. v.* for further details.

The judge may, on application in any case, suspend the execution of such monition pending an appeal, if he shall think fit (*q*).

When the bishop is patron or is ill, the archbishop is to act (*r*); and when both are ineligible, His Majesty may appoint an archbishop or bishop to act (*s*).

PURGATORY. The Romish doctrine concerning Purgatory is condemned by our Church (*t*), which teaches that the only Purgatory wherein we must trust to be saved is the death and blood of Christ (*u*). (*See* PRAYERS FOR THE DEAD.)

QUARE IMPEDIT. When a stranger presents a clerk to a living, or disturbs the real patron in his right of presentation, the remedy was formerly by a writ of *quare impedit*, or an assize of *darrein presentment;* but now the procedure is by action in the King's Bench Division of the High Court, commenced by writ in the usual way. The action should be brought within six months after the avoidance, in order to prevent the bishop presenting by *lapse*. The plaintiff (the patron) should in his statement of claim show a title in himself or his ancestors, or those under whom he claims—an actual presentation under that title, and a disturbance before action brought. Upon this the bishop and the clerk usually disclaim all title, save only the one as ordinary to admit and institute, and the other as presentee of the patron, who is left to defend his own right (*x*). Frequently the action is against the bishop for refusing a clerk for unfitness. (*See* INSTITUTION.)

QUEEN ANNE'S BOUNTY. The fund formed by the liberality of Queen Anne, and therefore known as Queen

(*q*) Sect. 9. As to enforcing judgments, *see* MONITION; INHIBITION; ECCLESIASTICAL COURTS; EXCOMMUNICATION.

(*r*) See *Serjeant* v. *Dale* (1877), 2 Q. B. D. 558.

(*s*) Sect. 16.

(*t*) Art. 22.

(*u*) Homily of Prayer (3rd part).

(*x*) 3 Ste. Com. 454; and see pp. 448—457.

Anne's Bounty (the history of which will be found under FIRST FRUITS), is managed by governors under provisions contained in various Acts of Parliament (*y*). The governors may accept gifts of land or money, and are exempt from the Mortmain Act (*q. v.*). In addition to first fruits, the following are also received by Queen Anne's Bounty:—the profits or part of the profits of sequestered benefices (*z*); proceeds of sale of parsonages (*a*); penalties and fines under the Pluralities and Colonial Clergy Acts; certain fees under the Public Worship Regulation Act, 1874; dilapidation moneys (*b*); and enfranchisement moneys of copyholds (*c*).

The governors make advances for the following purposes:—for the augmentation of benefices; to incumbents for repairs, buildings, buying land, compensation to tenants, &c.; to deans and chapters for building and purchasing episcopal houses, and for the improvement of cathedrals; to the Ecclesiastical Commissioners for the purposes of the New Parishes Acts, &c. The governors will make grants of from 100*l.* to 200*l.* to meet benefactions for the augmentation of livings of not less than 45*l.*, and not more than 200*l.* a year. Application must be made to the governors between 1st January and 1st March in each year. Particulars can be obtained from the secretary.

QUO WARRANTO. A writ issuing out of the King's Bench Division to inquire by what right or warrant a person holds an office. If there has been no real but only a colourable election, the office is not full *de facto*, and the remedy is by *mandamus* (*q. v.*) to compel admission. Proceedings in *quo warranto* are now deemed to be civil proceedings whether for the purposes of appeal or otherwise (*d*).

(*y*) 2 & 3 Anne, c. 20; 1 Geo. 1, st. 2, c. 10; 1 & 2 Vict. c. 20; 28 & 29 Vict. c. 69; 33 & 34 Vict. c. 89; 59 & 60 Vict. c. 13.

(*z*) 1 & 2 Vict. c. 106, s. 54.

(*a*) 1 & 2 Vict. c. 23, ss. 8, 9; 1 & 2 Vict. c. 106, s. 25; 2 & 3 Vict. c. 49, ss. 14, 17—19.

(*b*) *See* DILAPIDATIONS.

(*c*) 21 & 22 Vict. c. 94, s. 17; 50 & 51 Vict. c. 73.

(*d*) 47 & 48 Vict. c. 61, s. 15; and see R. S. C., Ord. LXVIII. r. 2; and Crown Office Rules, 1886, rr. 51—59; and see Shortt on Informations, &c.

READING DESK. In every church there must be a convenient seat for the minister to read service in (*e*). It is sometimes called a "reading pew" (*f*).

READING IN. Every person instituted or collated to any benefice with cure of souls, or licensed to a perpetual curacy, must, on the first Lord's Day on which he officiates, or on such other Lord's Day as the ordinary may appoint and allow, publicly and openly in the presence of the congregation then assembled read the Thirty-nine Articles, and immediately after make the Declaration of Assent, adding after the words "Articles of Religion" in the said declaration the words "which I have now read before you." If the clerk wilfully fails to comply with this, he absolutely forfeits his benefice (*g*). It is considered advisable that the churchwardens and some parishioners should certify that the reading in has been duly performed. No particular form of certificate is necessary, but one will be furnished by the bishop's secretary (*h*).

A curate on being licensed need not read the Articles, but he must publicly make the Declaration of Assent. This is to be done on the first Lord's Day on which he officiates, in the church or one of the churches to which he is licensed, in the presence of the congregation and at the time of Divine service. He must also make and subscribe the like declaration in the presence of the bishop or his commissary (unless, having been ordained the same day, he has already done so). Failure to comply with these requirements renders the licence void (*i*).

RECONCILIATION. (*See* PARISH CHURCH.)

RECTOR. The rector is the governor or ruler of a parochial church. He is also called "parson" (*q. v.*). Sometimes the rector is a layman and known as the lay

(*e*) Can. 82.
(*f*) Rubric, Commination Service.
(*g*) 28 & 29 Vict. c. 122, s. 7. *And see* LAPSE.
(*h*) London Dio. Book, 1890, 215.
(*i*) 28 & 29 Vict. c. 122, s. 8.

impropriator, in which case either (1) the freehold of part of the church property has been severed and is vested in a *vicar* (*q. v.*); or (2) a clergyman is charged with the cure of souls who was formerly styled a perpetual curate, but now, in most cases, vicar (*q. v.*).

A rector, whether clerical or lay, has exceptional rights over the chancel (*q. v.*). (*See* INCUMBENT.)

REGISTERS. Parish registers of baptisms, marriages, and burials are said to have been first instituted in 1538. After various enactments, the whole subject of ecclesiastical registration was dealt with by 52 Geo. 3, c. 146, which still contains the law as to baptisms and burials, but has been repealed as to marriages (*k*). This Act provides that registers of public and private baptisms and burials, according to the rites of the Church of England, shall be kept by the officiating minister of every parish or chapelry (sect. 1), and of every cathedral and collegiate church (sect. 20), in books of parchment or of good and durable paper, to be provided by his Majesty's printer, whereon shall be printed the heads of information required to be entered according to the forms in the schedules to the Act. The entries and the pages must be numbered progressively (sect. 1). Baptisms and burials must be entered in separate books (sect. 3), and not later than seven days after the ceremony; and when performed in any other place than the church or churchyard and by a minister other than the parish minister, a certificate (according to the form in Schedule D.) must be forwarded to the parish minister, who will enter such baptism or burial according to the certificate (sect. 4); but this latter provision does not apply to burials in burial grounds provided under the Burial Acts (*l*). The register books must be kept in the custody of the parish minister in a dry, well-painted, iron chest under lock and key, and in a secure place. They are to be deemed to belong to the parish (sect. 5). Copies of the

(*k*) 6 & 7 Will. 4, c. 86, s. 1. (*l*) 20 & 21 Vict. c. 81, s. 16.

entries for the year preceding must be made at the expiration of two months after the end of every year on parchment, and in the prescribed form by the minister or under his direction, and must be signed by him and attested by one of the churchwardens (sect. 6). These copies are to be transmitted by the churchwardens through the post (no longer post free) to the registrar of the diocese (sect. 7). In extra-parochial places, the officiating minister may deliver a memorandum of baptisms and burials to the minister of such immediately adjoining parish as the ordinary may direct (sect. 10). Making false entries in or injuring the register is felony (*m*); but a minister committing accidental errors is not punishable, provided he shall, within one month after discovering such error, in the case of a baptism, in the presence of the parent or parents of the child, and in the case of a burial, of two persons who attended it, or in the case of death or absence of such parties, of the churchwardens (who shall attest the same), correct the entry according to the truth of the case by entry in the margin, and shall sign and date the entry (*n*).

This statute only applies to baptisms and burials according to the rites of the Church of England, but by subsequent Acts there are provisions for the registration of all burials, the duty being (where not otherwise provided for) thrown on the company, body, or persons to whom the burial ground belongs, or on the relatives of the deceased, and the register books are directed to be sent to the registrar of the district (*o*).

By the Local Government Act, 1894, the custody of the registers of baptisms, marriages, and burials, and of all other books and documents containing entries wholly or partly relating to the affairs of the church or to ecclesiastical charities except documents directed by law to be kept with the public books, writings, and papers of the parish, is to

(*m*) 24 & 25 Vict. c. 98, ss. 36, 37.
(*n*) 11 Geo. 4 & 1 Will. 4, c. 66, s. 21.
(*o*) See 3 Ste. Com. 249; and BURIAL.

remain as provided by the existing law and unaffected by the Act. The incumbent and churchwardens on the one part, and the parish council on the other, are to have reasonable access to such books and documents, and any difference as to custody or access is to be determined by the county council (*p*).

In 1836, a civil system of registration of births, marriages, and deaths came into operation. With the registration of *births* and *deaths* (*q*) the clergy have nothing to do, but their duties as registrars of *marriages* are defined by the new law. The registrar-general furnishes marriage register books and forms for certified copies to church incumbents (and to the proper officers of the Quakers and Jews, and to dissenting ministers and others duly authorized under the Marriage Act, 1898). Every clergyman (and all other authorized ministers having similar duties) shall, immediately after every marriage, register in duplicate in two of the marriage register books the several particulars according to the form in Schedule C. to the Act, and every such entry shall be signed by the clergyman, and by the parties married, and by two witnesses; and shall be made in order from the beginning to the end of each book; and the number of the place of entry in each duplicate register book shall be the same (*r*). Every incumbent shall, in the months of April, July, October, and January, make and deliver copies certified by him to the superintendent registrar of the district (or some registrar under his superintendence (*s*)), and if there shall have been no marriage entered since the last certificate, shall certify the fact under his hand (*t*); and one copy of every such register book, when filled, shall be delivered to the superintendent registrar, and another copy shall be kept by the incumbent with the registers of baptisms and burials (*u*).

(*p*) 57 & 58 Vict. c. 73, s. 17 (8).
(*q*) As to this, see 37 & 38 Vict. c. 88.
(*r*) 6 & 7 Will. 4, c. 86, s. 31.
(*s*) 1 Vict. c. 22, s. 29; 61 & 62 Vict. c. 58, s. 11 (4).
(*t*) 6 & 7 Will. 4, c. 86, s. 32.
(*u*) *Ibid.* s. 33; and see *ante*, and 61 & 62 Vict. c. 58, ss. 7, 11.

The incumbent must allow searches to be made at all reasonable times, and shall give a copy certified under his hand on payment of the following fees, viz., for searches, 1*s.* for the first year and 6*d.* for every additional year, and 2*s.* 6*d.* for every single certificate (*x*) (stamp duty, 1*d.* (*y*)). This does not authorize any charge for extracts made by the person searching. The searcher is not entitled to remain an unreasonable time looking at the registers, and probably he is not entitled to have the book in his hand (*z*). Searches can also be made at the general registry office at Somerset House.

The penalty for every person who, without reasonable cause, omits to register a marriage solemnized by him is 50*l.*, and the like penalty is incurred by every person having custody of a register or a certified copy who carelessly loses or injures it (*a*).

Wilfully injuring or falsifying any register is felony (*b*).

All registers deposited in the general registry office, whether parochial or non-parochial (except the registers of baptisms and marriages at the Fleet and King's Bench prisons, at Mayfair, at the Mint, in Southwark, and elsewhere), are deemed to be in legal custody, and are receivable in evidence in all courts of justice, subject to the provisions of the Acts (*c*).

REGISTRAR'S CERTIFICATE is to all intents and purposes equivalent to banns (*d*). It is obtained by one of the parties giving notice under his or her hand to the superintendent registrar of the district within which the parties shall have dwelt for not less than seven days then next preceding; or if the parties dwell in the districts of different superintendent registrars, by giving the like notice to the superintendent

(*x*) 6 & 7 Will. 4, c. 86, s. 35.
(*y*) For exemptions, *see* STAMP DUTIES.
(*z*) *Steele* v. *Williams* (1853), 22 L. J. Ex. 227.
(*a*) 6 & 7 Will. 4, c. 86, s. 42.
(*b*) 24 & 25 Vict. c. 98, ss. 36, 37; but see *ante*.
(*c*) 3 & 4 Vict. c. 92, s. 6; 21 & 22 Vict. c. 25.
(*d*) 1 Vict. c. 22, s. 36.

registrar of each district (*e*). There is a prescribed form of notice (*f*), which contains a solemn declaration of belief that there is no impediment to the marriage, &c. Persons wilfully making a false declaration are guilty of perjury. The notice when given is entered in "The Marriage Notice Book," kept by the registrar (fee 1*s*.). This book is open for inspection to all persons without fee. The notice, or a copy of it, is publicly exhibited in the registrar's office for twenty-one days, and then the registrar (in the absence of any impediment) issues his certificate in the prescribed form (*g*). The issue of the certificate may be forbidden by any person whose consent would have been required by law to the marriage if by ecclesiastical licence, and he may do so by writing "forbidden" against the entry in the Marriage Notice Book (*h*). And at any time within three calendar months (after which the whole proceedings are void) after the day of entry of the notice the marriage may be solemnized under the authority of the certificate, either according to the rites of the Church of England, or in any of the other ways now allowed by Act of Parliament (*i*). The Church in which the marriage is to be solemnized must be in the district of the superintentendent registrar who granted the certificate (*k*).

The registrar may also issue a certificate with licence to marry, but this does not apply to Church of England marriages (*l*).

RELIGIOUS HOUSES (abbeys, priories, convents, monasteries, nunneries, and retreats) were mostly dissolved by Henry VIII., though the alien priories, that is, religious houses filled by foreigners only, had been dissolved pre-

(*e*) 6 & 7 Will. 4, c. 85, s. 4; as to licence, see 19 & 20 Vict. c. 119, s. 6.

(*f*) See Sched. A. to 19 & 20 Vict. c. 119.

(*g*) 6 & 7 Will. 4, c. 85, s. 7; Sched. B. to 19 & 20 Vict. c. 119.

(*h*) 6 & 7 Will. 4, c. 85, ss. 9, 10.

(*i*) *See* MARRIAGE.

(*k*) 1 Vict. c. 22, s. 36.

(*l*) *See* LICENCE.

viously (*m*). Roman Catholic religious orders are illegal, and in some cases the members are liable to banishment (*n*).

There is no legal objection, in the present day, to persons voluntarily binding themselves together to live under the old monastic rules of poverty, chastity, and obedience; but any member of the community may shake off the fetters at any time if he or she thinks fit, and has the courage to do so (*o*).

Gifts by inmates of religious houses to the society or its superior are looked upon with great suspicion, on account of the undue influence to which they are exposed. In a leading case, the position of a "sister" was summed up thus:—"She had vowed poverty and obedience, and she was not at liberty to consult externs without the leave of the superior. She was not a person who treated her vows lightly; she was deeply religious. . . . . She was absolutely in the power of the lady superior and the chaplain. A gift made by her under these circumstances to the lady superior cannot, in my opinion, be retained by the donee" (*o*). Such a gift, however, is only voidable and not void, and the donor ought to take steps to recover the gift within a reasonable time after the removal of the influence under which the gift was made. Thus, where a lady allowed six years to pass after leaving a sisterhood before bringing an action, she was held barred by laches and acquiescence (*p*).

RELINQUISHMENT, DEED OF. Any priest or deacon of the Church of England may, after having resigned any and every preferment held by him, relinquish his office by executing a deed in the following form:—

Know all men by these presents, that I, A. B., of , having been admitted to the office of priest [*or* deacon, *as the case may be*] in the Church of England, and having resigned [*here to be inserted*

(*m*) See 1 Bla. Com. 386.

(*n*) 31 Geo. 3, c. 32, s. 17; 10 Geo. 4, c. 7, ss. 28—37. *See* DISSENTERS.

(*o*) *Per* Lindley, L. J., in *Allcard* v. *Skinner* (1887), 36 Ch. D. 184. *And see* CLERGY DISABILITIES. Bills have been promoted for the inspection of monasteries and convents, but hitherto without success.

(*p*) *Allcard* v. *Skinner*, *ubi sup.*

description of late preferment, if any], do hereby in pursuance of the Clerical Disabilities Act, 1870, declare that I relinquish all rights, privileges, advantages, and exemptions of the office as by law belonging to it. In witness whereof I have hereunto set my hand and seal, this day of , 19 .

(Signed) A.B. (L.S.)

Executed by A. B. in presence of
C. D., of .
[*Address and description of witness.*]

The deed must be enrolled in the Chancery Division, and an office copy of the enrolment should be delivered to the bishop of the diocese in which the minister last held a preferment, or if he has not held any preferment, then to the bishop of the diocese in which he is resident; in either case stating his place of residence. He may also give notice of having so done to the archbishop. At the expiration of six months after such delivery, the bishop or his successor in office shall, on the application of the person executing the deed, cause the deed to be recorded in the registry of the diocese, and thereupon (but not sooner) the person executing the deed loses all the rights, privileges, advantages, and exemptions, and is freed from all disabilities, disqualifications, restraints, and prohibitions attached to the office of priest or deacon of the Church of England. If the bishop has notice of proceedings pending against the minister, he must not record the deed in the registry until the proceedings are ended and sentence executed. This Act does not relieve any person from any pecuniary liability for dilapidations or otherwise (*q*).

A minister may, after enrolment (and it would seem at any time before the deed is recorded in the registry), change his mind, and, if necessary, vacate the enrolment (*r*); but the procedure, in the event of the minister changing his mind after the final step has been taken, does not seem to have been provided for. He could hardly require re-ordination,

(*q*) 33 & 34 Vict. c. 91; 45 & 46 Vict. c. 50, s. 242 (2).

(*r*) *Ex p. A Clergyman* (1872), L. R. 15 Eq. 154.

as the Act does not purport to cancel his orders, though the execution of the deed amounts to much the same thing so far as England is concerned.

REPAIRS. (*See* INCUMBENT; CHANCEL; PEW.)

RESERVATION of the elements consecrated at the Lord's Supper is illegal. An offending incumbent has been inhibited from keeping them or causing or permitting them to be kept in the church; and also from "keeping burning or causing or permitting to be kept burning a light" in front of the consecrated bread and wine (*s*).

RESIDENCE. By the Pluralities Act, 1838, every beneficed spiritual person is required to reside on his benefice, or on one of his benefices, and in the house of residence (if any) belonging thereto, for nine months in the year, unless he obtains a licence, or is otherwise exempt (*t*).

Penalties.—For total non-residence, three-fourths of the annual value of the benefice; for absence of more than eight months, two-thirds; more than six months, one-half; more than three months, one-third (*u*). They are (together with costs) recoverable only in the Bishop's Court. They may be applied to the improvement of the benefice, or the house or buildings thereof, otherwise they go to Queen Anne's Bounty (*x*).

Proceedings to compel residence may be taken (instead of proceedings for penalties) by monition and sequestration (*q. v.*) (*y*). The bishop usually communicates informally with the incumbent before issuing the monition, but he is not bound to do so (*z*). The monition requires the incumbent

(*s*) Arts. 25, 28; Rubric; *Oxford* v. *Henly*, [1907] P. 88, 105.
(*t*) 1 & 2 Vict. c. 106, s. 32. The previous Acts are repealed; 32 & 33 Vict. c. 109. *And see* PLURALITY.
(*u*) 1 & 2 Vict. c. 106, s. 32.
(*x*) *Ibid.* ss. 114, 115, 119.
(*y*) *Ibid.* s. 54.
(*z*) *Bartlett* v. *Kirwood* (1853), 2 E. & B. 771.

forthwith to proceed to reside, and to make a return within a certain number of days, which must not be less than thirty from the date of service. Before sequestration, the incumbent must have an opportunity of being heard. The hearing need not be with the same formalities as are adopted in proceedings before Courts; they may be similar to those taken by a rector before he removes a parish clerk (*z*). Thus, where an incumbent sends a return to a monition, assigning an excuse for non-residence, which the bishop considers insufficient, that is a sufficient hearing to authorize the bishop to make an order upon the incumbent to return into residence within thirty days; and where the incumbent, being served with such order, still makes the like excuse, it is a sufficient hearing to authorize the bishop to sequester the benefice after the lapse of thirty days (*a*).

Exemptions.—A number of persons, *e.g.*, deans, royal chaplains, chaplain to the House of Commons, chancellors, vicars-general, commissaries, archdeacons, clergy of the Chapels Royal, preachers at the Inns of Court, and principals of Eton, Winchester, Charterhouse, St. David's, and King's, London, are partially exempt from non-residence, being allowed to count the time occupied in their respective duties as residence on one of their benefices (*b*); but in the case of prebendaries, canons, priests, vicars, vicars-choral, minor canons, and fellows of Eton and Winchester, only five months can be so counted in any one year. Such year, however, is not necessarily to be reckoned from 1st January to 31st December (*c*).

The question as to the *fact* of non-residence, or the sufficiency of the excuse for it, is for the determination of the bishop, subject to an appeal to the archbishop. Being in prison for a crime does not constitute a legal cause of exemption (*d*).

(*z*) *Bonaker* v. *Evans* (1850), 16 Q. B. 163.
(*a*) See note (*z*), p. 281.
(*b*) 1 & 2 Vict. c. 106, s. 38.
(*c*) *Ibid.* s. 39. As to suffragan bishops, see SUFFRAGAN. The rules seem to work out that an incumbent who is also a canon has two months' leave of absence instead of three.
(*d*) *Re Bartlett* (1848), 3 Exch. 28;

Licence.—A licence for non-residence is obtained on petition to the bishop, which must be signed by the spiritual person requiring the licence, or by some person approved by the bishop in that behalf. It must state whether the spiritual person intends to perform the duty in person, if so, where he intends to reside; whether he intends to employ a curate, if so, at what salary, and whether such curate will be in residence, and whether he has any other ecclesiastical duties; also the value and population of the benefice must be stated; the number of churches and chapels upon it, and the date of the incumbent's admission. This petition has to be filed in the Diocesan Registry. The bishop may demand any proofs he thinks necessary (*e*), and may then grant the licence in the following cases:—

(1.) Incapacity of mind or body;

(2.) On account of the dangerous illness of wife or child residing with him (in this case, for a period not exceeding six months, renewable only with the approbation of the archbishop);

(3.) Where there is no (or no fit) house of residence the bishop may grant a licence for a fixed period to reside in any other suitable house situate within three miles (or in a town, two miles) of the church (sect. 33); but if no suitable house can be obtained within such limits, and this fact is certified by two neighbouring incumbents and the rural dean, and the unfitness of the residence is not caused by the negligence or other misconduct of the spiritual person, then the bishop may grant such licence as he may think fit (sect. 43);

(4.) Where the incumbent is owner of a mansion or messuage in the same parish, he may be licensed to reside in such mansion or messuage, but must keep the house of residence in repair (*f*);

and see *Dean* v. *Green* (1882), 8 P. D. 91.

(*e*) 1 & 2 Vict. c. 106, ss. 42, 43, 123.

(*f*) *Ibid.* s. 43.

(5.) In all other cases, the bishop can only grant licences with the approval of the archbishop (*g*).

Any spiritual person to whom the bishop refuses a licence may appeal to the archbishop within one month after the refusal (*h*). Licences by an archbishop exercising original and not appellate jurisdiction are reviewed by his Majesty in Council. A licence, although revoked, is to be deemed valid between the grant and revocation by his Majesty in Council (*i*). During the vacancy of a see or the illness of a bishop, licences can be obtained from the persons lawfully empowered to exercise the bishop's general jurisdiction, but they are not valid unless approved and signed by the archbishop (*k*).

Fees.—Bishop's secretary, 10*s.*; registrar, 3*s.*; archbishop's secretary, 5*s.* in addition to stamp duty (*q. v.*) (*l*).

Licences of non-residence may be revoked by the bishop or his successor by an instrument in writing; but opportunity must be given to the incumbent to show cause against it, and the revocation is subject to an appeal to the archbishop within one month (*m*). The licences are not revoked by the death or removal of the bishop (*n*).

Copies of all licences and revocations are kept in the diocesan registry and may be inspected (fee 3*s.*). The spiritual person must send a copy of his licence and statement of his exemption to the churchwardens within one month after the grant; neglect to do this forfeits the benefit of the licence or exemption; and similarly, the bishop must send a copy of a revocation, and these documents are to be deposited in the parish chest, and publicly read at the visitation next succeeding the receipt thereof (*o*).

If a non-resident incumbent neglects to appoint proper curates, the bishop may do so and assign them stipends (*p*).

(*g*) 1 & 2 Vict. c. 106, s. 44.
(*h*) *Ibid.* s. 43. *And see* APPEAL.
(*i*) *Ibid.* s. 51.
(*k*) *Ibid.* s. 45.
(*l*) *Ibid.* s. 47.
(*m*) *Ibid.* s. 49.
(*n*) *Ibid.* s. 48.
(*o*) *Ibid.* s. 50.
(*p*) *See* CURATE.

And the incumbent cannot, while the licence continues in force, return and resume the duties without the bishop's permission; nor may he, if non-resident for more than twelve months, during such time interfere with the curate in the discharge of the duties entrusted to him by the bishop (*q*).

Where the residence has been let and the tenant refuses to give up possession, the incumbent is not liable to penalties for non-residence (*r*).

On the avoidance of a benefice upon which there is no fit house of residence, if it appears that the clear annual profits of the benefice exceed 100*l*., the bishop may provide for the erection of a house on the glebe or any suitable piece of land (*s*), or may purchase a suitable house (*t*), which is to be conveyed to the patron to go with the living (*u*), in form in schedule, and for these purposes may raise a sum of money not exceeding four years' net income after deducting all outgoings except curates' salary, by mortgage of the profits of the benefice for the term of thirty-five years. The form of mortgage is contained in the second schedule to the Act (*x*). It binds the incumbent's successors and gives the mortgagee a right to distrain on failure to pay principal and interest for forty days after due (*y*). The money raised by the mortgage is to be paid to the bishop's nominees, and the balance (if any) may be repaid to the mortgagee or laid out in lasting improvements at the bishop's discretion. The costs of such nominees are not to exceed 5 per cent. on the sum expended (*z*). Queen Anne's Bounty may lend the money at 4 per cent. or under (*a*). The patron and incumbent have a right to object to any such arrangement, but must do so within two months, and thereupon the bishop may order the plan to be modified or abandoned (*b*). Dilapidation money not expended in repairs may also be

(*q*) 48 & 49 Vict. c. 54, s. 12.
(*r*) 1 & 2 Vict. c. 106, ss. 59, 60.
(*s*) *Ibid.* s. 62.
(*t*) *Ibid.* s. 70.
(*u*) *Ibid.* s. 70.
(*x*) *Ibid.* ss. 62, 64.
(*y*) *Ibid.* s. 65.
(*z*) Sect. 74.
(*a*) *Ibid.* s. 72; *Lidbetter* v. *Hatch*, [1907] 1 Ch. 404.
(*b*) *Ibid.* s. 64.

laid out for the above purposes (*c*); also proceeds of sale of a churchyard (*d*).

Where the Governors of Queen Anne's Bounty have purchased a suitable residence approved by the bishop, it becomes the house of residence for all purposes whatsoever (*e*).

The widow of any spiritual person may occupy the house of residence with the enjoyment of the curtilage and garden for two calendar months after his decease (*f*).

Although the spiritual person may not reside, he is bound to keep the house in repair, otherwise he becomes liable to all the penalties for non-residence (*g*).

Bishops are liable to penalties for non-residence by the general ecclesiastical or common law. It is doubtful whether residence in their London houses is equivalent to residence in their dioceses (*h*).

RESIGNATION. As a general rule all resignations must be made to the next immediate superior. In the Church of England an incumbent must resign to his bishop, a bishop to his metropolitan, an archbishop to the sovereign (*i*). There was formerly an exception in the case of donatives, the resignation being made to the patron. There is, perhaps, an exception in the case of deaneries in the sovereign's gift (*k*). A resignation of a benefice may be made either in person or by a deed, which must be attested by two witnesses, but need not be executed before a notary public (*l*). It must be unconditional, even where an exchange (*q. v.*) is intended (*m*); and when once made cannot, it would seem,

(*c*) 1 & 2 Vict. c. 106, s. 69.

(*d*) *Ex parte St. Botolph* (1894), L. R. 3 Ch. 544.

(*e*) 1 & 2 Vict. c. 106, s. 34.

(*f*) *Ibid.* s. 36.

(*g*) *Ibid.* s. 41.

(*h*) *Barton* v. *Wells* (1789), 1 Hag. Cons. 21; Watson, 687.

(*i*) 1 Bla. Com. 382. For form of resignation of an archbishop see *London Gazette* (1908), p. 9741.

(*k*) Gib. 822.

(*l*) *Reichel* v. *Bishop of Oxford* (1889), 14 App. Ca. 265; and see forms in 2 Newman, 708; 2 Crabb, 1345; 2 Wilde Sup. to Barton, 437. The old form runs—"In nomine Dei Amen. Ego N rector ecclesiæ de N ipsam meam ecclesiam in sacras manus venerabilis in Christo patris domini N dei gratia N episcopi resigno." If the bishop's secretary prepares the instrument, he is entitled to charge 1*l.* 1*s.*

(*m*) *Rumsey* v. *Nicholl* (1877), 2 C.

be revoked. In a recent case it was held that a present resignation, the ordinary agreeing to postpone formal acceptance till a day named, was an unconditional resignation and incapable of being revoked. In the same case Lord Herschell said: "I am not satisfied that where a clerk has unconditionally resigned his benefice into the hand of the bishop, he can, in any case, by a subsequent act debar the bishop from accepting the resignation" (*n*). It has been said that a bishop can absolutely refuse to accept a resignation without assigning a reason, but there is some doubt as to this, and in any case it would seem that the bishop is bound to accept a resignation where a clergyman wishes to relinquish his orders under the Clerical Disabilities Act, 1870, or if he is admitted to another living, or a bishopric other than a colonial or suffragan bishopric (*o*), or where there is a valid resignation bond (*q. v.*).

By the Incumbents' Resignation Acts, 1871 and 1887, it is provided that where an incumbent is incapacitated by permanent mental or bodily infirmity from the due performance of his duties, and has been incumbent of his benefice for seven years continuously, he may make a representation to the bishop to that effect, and that he is desirous of retiring on a pension (*p*). If the incumbent is a lunatic so found by inquisition, his committee may act for him (*q*). On receiving the representation the bishop may, if he sees fit, cause a commission to be issued to inquire and report in manner provided in the Act (*p*).

There must be five commissioners. *One* (an incumbent in the same diocese) is appointed by the incumbent; *one* (a clergyman or layman) by the patron entitled to the next presentation; *two* by the bishop, one of whom must be an archdeacon or rural dean, and the other an incumbent in the

P. D. 294, at p. 299; *Fletcher* v. *Sondes* (1826), 3 Bing. 508, per L. C.

(*n*) See note (*l*), *supra*.

(*o*) *See* INCUMBENT.

(*p*) 34 & 35 Vict. c. 44, s. 5; and for form see Schedule A., which is set out in full in most diocesan calendars.

(*q*) 34 & 35 Vict. c. 44, s. 18.

diocese; and *one* (who must be a magistrate and a member of the Established Church) by the chairman of quarter sessions or the lord lieutenant of the county (*r*). If the commission considers the resignation to be expedient it will assess the amount of pension, which must not exceed one-third of the annual value of the benefice, or be an amount which shall not leave a sufficient income to secure the due performance of the church services according to the scale of stipends in the Pluralities Act (*s*). Such annual value for the purpose of the Acts shall be the net annual value, exclusive of the parsonage or other place of residence of the incumbent, after deducting all rates, taxes, and charges assessed upon and payable out of the benefice, which charges shall include the salary of any curate who is compulsorily employed, or is in fact employed—the population exceeding 3,000, or there being more than one church to be served or more than two services on Sunday being usually held—and any annual payments in respect of any terminable mortgage having at the time of the sitting of the said commission more than two years to run (*t*).

It was held that this net annual value, when once fixed, is not liable to diminution afterwards for any cause (*u*); but now, every pension awarded after the 8th August, 1887, is to vary with the tithe averages, except that if no part of the income of the benefice is derived from tithe rentcharge or glebe lands, then the pension is not subject to variation (*x*). The amount of pension fixed cannot be reviewed by the High Court, even though it exceed the above-mentioned one-third (*y*).

These preliminaries settled, the bishop proceeds to declare the living void, as if vacated by death, but subject to the payment of the pension (*z*). If the patron refuses his con-

(*r*) 34 & 35 Vict. c. 44, s. 6.
(*s*) For this scale, *see* CURATE.
(*t*) 34 & 35 Vict. c. 44, ss. 8, 11; 50 & 51 Vict. c. 23, s. 5.
(*u*) *Robinson* v. *Dand* (1886), 17 Q. B. D. 341.
(*x*) 50 & 51 Vict. c. 23, s. 4.
(*y*) *Maning* v. *Hardy* (1904), 20 T. L. R. 776.
(*z*) 34 & 35 Vict. c. 44, ss. 9, 12; and for form, Schedule B.

sent to the resignation, the approval of the archbishop must be obtained (*a*). No benefice can at any time be subject to the payment of more than one pension (*a*).

A pension payable under these Acts is a charge on the benefice. It is "not transferable" (*b*). It therefore cannot be assigned or mortgaged, nor does it pass to the trustee in bankruptcy, nor can it be set off against a debt (*c*), unless the debt is a sum due for dilapidations payable by the retired clerk to his successor, and as to which default has been made. But the incumbent may not withhold in any one year more than one-half of the total amount of the pension for that year without the consent of the bishop (*d*).

Every clergyman pensioned under the Resignation Acts remains amenable to ecclesiastical discipline, and is liable to forfeit his pension for offences which would have involved forfeiture of his benefice, and proceedings under the Church Discipline Act may be taken against him as if he had remained incumbent; and if he reside out of the jurisdiction, the bishop, with consent of the archbishop, may summon him to attend in England, and if he neglects to appear within three months may proceed in his absence (*e*). He also loses his pension if he executes a deed of relinquishment (*q. v.*) of his office of minister, or if he is admitted to another benefice; and he may lose it wholly or partially if he obtains remunerative clerical employment, but only if the bishop, or the archbishop on appeal, so determines (*f*).

The parsonage house is, in every case, to belong to the new incumbent (*g*). The expenses of an inquiry under this Act are as to one-half defrayed by the retiring incumbent; the other half forms a charge on the revenues of the benefice in favour of the bishop; but if the application to resign is refused, the incumbent has to pay the whole. Such expenses

(*a*) *Ibid.* s. 9.
(*b*) *Ibid.* s. 10.
(*c*) *Gathercole* v. *Smith* (1881), 17 Ch. D. 1; 7 Q. B. D. 626. *And see* BANKRUPTCY.
(*d*) 50 & 51 Vict. c. 23, s. 6. *And see* DILAPIDATIONS.
(*e*) 34 & 35 Vict. c. 44, s. 13.
(*f*) *Ibid.* s. 15.
(*g*) *Ibid.* s. 14.

are recoverable as a debt at law or in equity by or for the bishop from the incumbent (*h*).

(As to the resignation of church dignitaries, *see* ARCHBISHOP, &c. As to corrupt resignation, *see* SIMONY.)

RESIGNATION BOND. A bond taken from the presentee by the patron that he will resign the benefice, either in some particular way or generally, as the patron may direct (*i*). Such bonds, at one time supposed to be valid, were afterwards held to be simoniacal contracts (*k*). They were then legalised in the case of family livings by the Clergy Resignation Bonds Act, 1828 (*l*); but now by the Benefices Act, 1898, they would seem to be again invalidated "on a transfer" as from the 1st January, 1899, though in the Declaration against Simony under the same Act, the clergyman declares that no bond to resign has been entered into "otherwise than as allowed by sects. 1 and 2" of the Act of 1828 (*m*).

The law as laid down in the Act of 1828, is that every *bonâ fide* engagement to resign made after the passing of the Act shall be valid, provided (i.) it is entered into before the presentation (sect. 1); (ii.) that one or two persons are specially named therein to the intent that one of them shall be presented, each of such persons being, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron (sects. 1, 2); (iii.) the deed or writing by which such engagement is made, is deposited within two calendar months after date, in the office of the registrar of the diocese (sect. 4). Registrar's fee 2*s*., search fee 1*s*. each search, and 6*d*. per folio, exclusive of stamp duty, for office copies. Every resignation made in pursuance of such an agreement shall refer to the engagement and state

(*h*) 34 & 35 Vict. c. 44, s. 16.

(*i*) For forms, see Davidson, V., pt. 2, 294.

(*k*) *Fletcher* v. *Lord Sondes* (1826), 3 Bing. 501, which was cured by 7 & 8 Geo. 4, c. 25.

(*l*) 9 Geo. 4, c. 94.

(*m*) 61 & 62 Vict. c. 48, s. 1 (3); the declaration in full is set out under SIMONY.

the name of the person for whose benefit it is made. And the ordinary cannot refuse the resignation except for good cause shown (sect. 5). Such resignation will be void unless the person for whose benefit it is made is appointed within six calendar months after the patron receives notice of the resignation. The Act only applies to private patrons (sect. 6).

RETABLE is a narrow ledge of wood, usually made in the shape of an oblong box. It is a modern innovation, and is a device for placing "decorations" as near as possible to the Communion Table. It is, sometimes, placed on the Communion Table at the back; sometimes fastened to the east wall. Flower vases and candlesticks may be placed upon it, and if placed at a sufficient distance from the Communion Table, a cross (*n*).

The retable should be movable. If fixed, it must not prevent the Holy Table being covered completely with a fair white linen cloth at Communion time (*o*).

REVEREND. The word "reverend" is not a title of honour or dignity, and a person prefixing the word to his name does not therefore claim to be a person in holy orders of the Established Church. It is a mark of respect and reverence, and nothing more. In the fifteenth and sixteenth centuries it was applied to the laity, and the clergy were usually addressed like knights as "sir" (*p*). It was applied to judges as late as 1726 (*q*). It does not seem to have been used generally by the parochial clergy until the end of the seventeenth century, and it would seem that the Puritan and Presbyterian ministers appropriated the title before the established clergy. A Wesleyan minister has therefore been

(*n*) *Durst* v. *Masters* (1876), 1 P. D. 373; *St. Andrew's* (1909), 25 T. L. R. 408. *And see* CROSS.

(*o*) *Liddell* v. *Beal* (1860), 14 Moore, P. C. 14, 15.

(*p*) See Shakespeare, *Merry Wives of Windsor*.

(*q*) See frontispiece to Ventris' Reports.

held entitled to prefix the word "reverend" (*r*). Archbishops are "most reverend," bishops "right reverend," and deans "very reverend." The Moderator of the Church of Scotland is "right reverend."

The Church authorities have no power to confer titles, that belongs solely to the Crown (*s*).

RITUAL. (*See* PUBLIC WORSHIP; ORNAMENTS; VESTMENTS.)

ROCHET is the distinctive episcopal surplice (*t*), worn with "lawn sleeves," and the chimere (*u*).

ROGATION DAYS. The Monday, Tuesday, and Wednesday preceding Ascension Day. No special service is now provided for these days, but there is a homily "for the days of Rogation week." "Beating the bounds" of parishes is the only remnant of the old Rogation processions, but this ceremony usually takes place on Ascension Day (*x*).

ROME, Church of. (*See* DISSENTERS.)

ROOD. (*See* CRUCIFIX.)

RURAL DEAN. A very ancient and formerly important officer of the Church, but in Blackstone's time "almost grown out of use." It was revived by the Ecclesiastical Commissioners Act, 1836. His deanery forms a division of

(*r*) *Keet* v. *Smith* (1875), 1 P. D. 73, P. C.

(*s*) *Ibid.*, *per* Lord Cairns; 34 & 35 Vict. c. 53. *And see* ARCHBISHOP.

(*t*) Rubric, Consecration of a Bishop; Ornaments Rubric, Prayer Book of 1552.

(*u*) The following account is from Dean Durel's *Vindiciæ* (1669), p. 125: "The dress of the bishops is different to that which the Roman bishops use . . . . for having laid aside the gown (*toga*), which is their usual outer dress, they put on a loose-fitting tunic with sleeves of fine linen (*lino byssino*) which falls a little below the knees, and over it they put another garment (the chimere) entirely made of black silk (*holosericam*), which is without sleeves and open in front so that the lawn sleeves and the lawn tunic itself may be seen in front." Cited Tomlinson on Prayer Book. The Roman Catholic rochet seems to have been a sleeveless surplice (Lyndwood, 252).

(*x*) *See* PARISH.

the archdeaconry (*y*), and his powers (such as they are) are similar to those of an archdeacon. Rural deans are supposed to inspect the conduct of the parochial clergy, and were formerly armed with a certain amount of judicial and coercive authority, but they are now mere deputies of the archdeacon or bishop, receiving sometimes a commission. In some cases they are by statute appointed to act as commissioners, as in the case of resignations (*q. v.*) and dilapidations (*q. v.*), and generally where similar powers are given to archdeacons (*z*).

SACRAMENTS ordained of Christ be not only badges or tokens of Christian men's profession, but rather they be certain sure witnesses and effectual *signs* of grace and God's goodwill towards us, by the which He doth work invisibly in us, and doth not only quicken but also strengthen and confirm our faith in Him (*a*). The Church of England, and Protestants generally, recognize two sacraments only, Baptism and the Supper of the Lord (*a*); the Greek and Roman Churches seven, the five additional sacraments being Confirmation, Penance, Orders, Matrimony, and Extreme Unction. Another meaning of sacrament is given in the Homilies as "anything whereby an holy thing is signified." "In which understanding of the word the ancient writers have given this name not only to the other five, commonly, of late years, taken and used for supplying the number of the seven sacraments, but also to divers and sundry other ceremonies as to oil, washing of feet, and such like, not meaning thereby to repute them as sacraments in the same signification that the two forenamed sacraments are" (*b*).

(*y*) 6 & 7 Will. 4, c. 77, preamble and s. 10; and as to the alterations of areas of rural deaneries, see the Archdeaconries and Rural Deaneries Act, 1874 (37 & 38 Vict. c. 63), set out in Lely and Whitehead's Statutes relating to Church and Clergy, 1894.

(*z*) For further information as to the ancient and modern duties of rural deans, see Makower, *Constitutional History of the Church of England*, Godolphin, App. 6, and Dansey, *Horæ Decanicæ Rurales* (1835), vol. ii.

(*a*) Art. 25, and cf. Catechism.

(*b*) Homily of Common Prayer and Sacraments.

In the Romish Church a sacrament is thought to be efficacious only if the priest *so intends*. Among Protestants the unworthiness of the priest is held not to hinder the effect of the sacrament (*c*).

SACRIFICE. The only sacrifices now offered in the Church of England are "praise and thanksgiving" and "ourselves, our souls and bodies." The sacrifice of the mass was abolished at the Reformation, and the power anciently conferred on priests "to offer sacrifices to God" struck out of the Ordinal. As Hooker says: "Sacrifice is now no part of the Christian ministry" (*d*). Such sacrifices are declared by our Church to be blasphemous, dangerous, and useless (*e*).

It is not lawful for a clergyman to teach that the sacrifice or offering of Christ upon the Cross, or the redemption, propitiation, or satisfaction wrought by it is or can be repeated in the ordinance of the Lord's Supper; nor that in that ordinance there is or can be any sacrifice or offering of Christ which is efficacious in the sense in which Christ's death is efficacious to procure the remission of the guilt or punishment of sins (*f*). And as we are taught in the Homilies (*g*)—"Herein thou needest no other man's help, no other sacrifice or oblation, no sacrificing priest, no mass, no means established by man's invention."

(As to statements apparently contravening the above not being *penal*, and as to a possible secondary meaning, *see* ARTICLES.)

(As to the oath formerly taken against the sacrifice of the mass, *see* TRANSUBSTANTIATION; PROTESTANT SUCCESSION.)

SACRILEGE. By 24 & 25 Vict. c. 96, whosoever shall break and enter any church, chapel, meeting-house, or other

(*c*) Art. 26. *And see* LORD'S SUPPER.
(*d*) Ecc. Pol. Bk. v. 78, 2.
(*e*) Art. 31, and cf. Irish Art. 99, and Homily of the Sacrament.
(*f*) *Per* P. C., in *Sheppard* v. *Bennett* (1872), L. R. 4 P. C. 411.
(*g*) Homily concerning the Sacrament, 1st part, 2.

place of Divine worship, and commit any felony therein, or being in the same shall commit any felony and break out, is guilty of felony, and on conviction is liable to penal servitude for life, or any term not less than five years (*h*), or to imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement (sect. 50). Also, whoever shall break into a church, chapel, meeting-house, or other place of Divine worship, or any building within the curtilage, *with intent* to commit any felony therein, is guilty of felony, and on conviction is liable to penal servitude for seven years and not less than five (*h*), or to imprisonment as above (sect. 57).

A tower has been held to be part of a church and within the Act, where the only entrance to it was through the church, from which the tower was not separated by a door or partition of any kind (*i*). Also a vestry which had a door opening into the church and another opening into the churchyard, the latter of which could only be unlocked from the inside (*k*).

By 24 & 25 Vict. c. 97, whosoever shall unlawfully and maliciously set fire to any church, chapel, meeting-house, or other place of Divine worship, is guilty of felony, with punishment similar to that under sect. 50 above mentioned, with the addition, if the offender is a male under sixteen, of "with or without whipping" (sect. 1). Also, if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, or pull down or destroy, any church, chapel, meeting-house, or other place of Divine worship, they are liable to a similar punishment as under sect. 50 above mentioned (sect. 11); but if they only injure or damage the building it is a misdemeanour, penalty as under sect. 57 above mentioned (sect. 12). Also, whosoever shall unlawfully and maliciously destroy or damage any picture, statue,

(*h*) 27 & 28 Vict. c. 47, s. 2; but see 42 & 43 Vict. c. 55; 54 & 55 Vict. c. 69, s. 4.

(*i*) *R.* v. *Wheeler* (1829), 3 C. & P. 585.

(*k*) *R.* v. *Evans* (1842), Carr. & M. 298. *And see* VESTRY.

monument, or other memorial of the dead, painted glass, or other ornament or work of art in any church, chapel, meeting-house, or other place of Divine worship, or in any churchyard or burial ground, is guilty of a misdemeanour, and liable to imprisonment for any term not exceeding six months, with or without hard labour, and, if a male under sixteen, with or without whipping; and the right of any person to recover damages for the injury so committed is not affected thereby (sect. 39).

By 24 & 25 Vict. c. 96, any person stealing, or cutting with intent to steal, anything made of metal fixed in any burial ground, is guilty of felony and punishable as in the case of simple larceny (sect. 31) (*l*).

By the canon, no plays, feasts, suppers, temporal courts, or musters are allowed in a church, chapel, or churchyard (*m*).

SANCTUARY. The right of a criminal to take refuge in sacred places existed both under the Mosaic (*n*) and Pagan laws. Among Christians the right attached only to the altar and nave of the church, but afterwards it was extended to the churchyard and the entire precinct of the church. At one time no crime, however bad, excluded a fugitive from protection (*o*), and the gross abuses consequent upon such a state of things led to the abolition of the right.

SCHISM is the cutting off of a portion of a Church, resulting in the formation of a sect. Whether it is a sin or not is a matter of opinion; it certainly is not the object of temporal coercion and punishment (*p*). Schism has, after all, only to do with external matters; there can be but one Church of Christ. There is no schism in His body, though His garments may be torn in pieces by the contending sects.

(*l*) See Archbold's Criminal Law.
(*m*) Can. 88.
(*n*) Numb. xxxv. 6; Deut. xix.
(*o*) Smith, Dict. of Chr. Ant.
(*p*) 4 Bla. Com. 52; Art. 19. See Cans. 9, 10, and 110, now obsolete, and CHURCH.

SCOTLAND, Church of (*q*), is the Christian religious body, which in Scotland maintains, under the Royal Supremacy, the true Protestant Religion established by law. It, and its predecessor, the Church of Rome, have been in existence since about 200 A.D. It was reformed in the sixteenth century, but much more completely than the Church of England. It rejected episcopacy, established the presbyterian form of Church government, and adopted doctrines similar to those now held by Protestant Dissenters in England. By the Act of Union of 1706, the position of the Church of Scotland, as the national established Church, and of Presbyterianism, as "the only government of the Church within the kingdom of Scotland," was secured. The Churches of England and Scotland are both alike Protestant, and the Sovereign takes an oath to maintain both (*r*).

Like the Church of England, the Church of Scotland is in possession of the ancient cathedrals and churches. Patronage has now been done away with, and each parish elects its own minister. The Church is governed by Kirk Sessions, Presbyteries, Synods, and the General Assembly, which consists of both clerical and lay deputies from each of the Presbyteries, and representatives from the universities and royal burghs. It is presided over by a Moderator (chosen annually by the Assembly) who takes precedence before dukes in Scotland, and immediately after bishops, in England (*s*), and the Sovereign is represented by a Lord High Commissioner, appointed each year by the Crown (*t*).

Like the Church of England, it has suffered greatly from dissent, and is now estimated to comprise only about half the population. Two new Presbyterian Churches, the United and the Free, were formed, and in 1900 were amalgamated under the name of the United Free Church. A small minority of the old Free Church are, however, carrying on that Church

(*q*) As to meaning of "Church," *see* CHURCH and CHURCH OF ENGLAND.
(*r*) *See* PROTESTANT SUCCESSION.
(*s*) English Churchman, 14th March, 1905; Burke, 2414.
(*t*) See Green's Encyc.

under its old name (*u*). There also exist two Episcopal Churches, the Protestant Episcopal Church of Scotland (*q. v.*) (which is in communion with the Church of England) and the Roman Catholic Church. All are tolerated.

Ministers of the Church of Scotland may not sit in the House of Commons (*x*), but it would seem that ministers of any dissenting denomination (except Roman Catholics) may. The orders of the Church of Scotland, not being Episcopal, have not, since 1662, been recognised by the Church of England, as a matter of order (*y*).

SCOTLAND, Protestant Episcopal Church in, comprises, in Scotland, episcopal dissenters from *the* Church of Scotland. This Church was founded by, and is in communion with, the Church of England. It is governed by a Synod, and has a code of canons, drawn up in 1838, and amended in 1863 and 1890.

None of its ministers can become beneficed or obtain any preferment in the Church of England without (1) the consent of the bishop of the diocese, and such bishop may refuse his consent without assigning any reason; (2) making every declaration and subscription which he would by law have been required to make at his ordination, if he had been ordained by a bishop of the Church of England. And any such minister (who does not hold or has not held any benefice or ecclesiastical preferment in England) who shall knowingly officiate on more than one day within three months in any (*Church of England*) church or chapel in England or Wales,

(*u*) They are colloquially termed the "Wee Frees," and it was held by the House of Lords that they were entitled to all the property of the old Free Church. The new Church holding doctrines at variance with the distinctive doctrine of the old Free Church; *General Assembly of the Free Church of Scotland* v. *Lord Overtoun*, [1904] A. C. 515. But it was found that the small remnant of the old Free Church was unable adequately to carry out all the trusts of the property, so an Act of Parliament was passed for its division between the Free and United Free Churches (5 Edw. 7, c. 12).

(*x*) 41 Geo. 3, c. 63. *And see* CLERGY.

(*y*) *See* APOSTOLIC SUCCESSION. As to alteration of the formula of subscription to the Confession of Faith, see 5 Edw. 7, c. 12, s. 5.

without notifying the same to the bishop, or who shall similarly officiate contrary to any injunction of the bishop under his hand and seal, shall for every such offence forfeit the sum of 10*l.* to Queen Anne's Bounty (*z*).

SEQUESTRATION is a process of execution against a beneficed clerk. An ordinary judgment entered up against an incumbent does not operate as a charge on the profits of his benefice; so, when a writ of *fieri facias* or *elegit* has been issued, and a return is made that he has no goods or chattels nor any lay fee, then (but not before) a writ of *fieri facias de bonis ecclesiasticis* or a writ of sequestration (*sequestrari facias*) may be issued (*a*). Such writs, when sealed, are to be delivered to the bishop to be executed by him, and, when returned by him, are to be delivered to the parties or the solicitors by whom respectively they were sued out, and filed as of record in the Central Office (*b*). Such writs require to be published by fixing a copy on the church door, and the first published has priority: except as to those issued after the commencement of a bankruptcy, when the trustee has priority in certain cases (*c*); and sequestrations under the Pluralities Acts, which have priority over all other sequestrations (*d*).

The bishop may appoint any person he pleases to be sequestrator, who thereupon becomes the manager of the benefice, and is bound to do repairs, &c., but the payments made by him may be inquired into by a court of law. Thus, it was held that a sequestrator had no authority to expend on repairs out of the proceeds of the benefice a larger sum than that estimated as necessary by the surveyor's report under the Dilapidations Act, 1871, and that such expendi-

(*z*) 27 & 28 Vict. c. 94, ss. 5, 6. Sects. 1, 3, 4 of this Act are repealed by Stat. Law Rev. Act, 1875.

(*a*) Rules of the Supreme Court, Order XLIII. r. 3; and see Forms, App. H, 5—7. See *Rabbits* v. *Woodward* (1869), 20 L. T. N. S. 778.

(*b*) Order XLIII. r. 4.

(*c*) Bankruptcy Act, 1883, s. 52 (1).

(*d*) 1 & 2 Vict. c. 106, s. 110; and see further, as to issuing these writs, Daniell, Ch. Pr.

ture must be disallowed (*e*). The sequestrator is empowered to take any necessary legal proceedings to recover tithes, &c., in his own name, but he is not bound to do so unless both he and the bishop are indemnified by the creditor. The payment to the sequestrator of tithes, rent, dues, and fees, effectually discharges the party making the same from all liability to the incumbent (*f*). He has to give security for the due performance of his duties, and is bound to account for all the profits of the benefice. He has to provide for the services of the church during the first six months, after which the bishop has power, under the Sequestration Act, 1871, to appoint curates and assign them stipends (*g*) to be paid by the sequestrator (sect. 3), and to inhibit the incumbent from performing the services (sect. 5). During the continuance of a sequestration the incumbent may not accept any other benefice unless with the consent in writing of the bishop and the sequestrator (sect. 7). The incumbent's right of presentation to benefices of which he is (as incumbent) patron, is suspended during sequestration and goes to the bishop of the diocese in which such vacant benefice is situated (sect. 6). But the incumbent's right to appoint a parish clerk, and all other rights not expressly taken away by the Sequestration Act, 1871, remain untouched (*h*).

When a beneficed clergyman becomes bankrupt, the certificate of the appointment of the trustee is sufficient authority for the granting of sequestration, without any writ or other proceeding; and the bishop may, if he thinks fit, appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident (*i*); and the sequestrator is to pay the sum so appointed out of the profits of the benefice to the bankrupt by quarterly instalments

(*e*) *Kimber* v. *Paravicini* (1885), 15 Q. B. D. 222. For a case where Court declined to re-open Chancellor's certificate, see *Burrow* v. *Tilson* (1898), C. A., 14 T. R. 214.

(*f*) 12 & 13 Vict. c. 67, ss. 1, 2.

(*g*) For details, *see* CURATE.

(*h*) *Lawrence* v. *Edwards*, [1891] 1 Ch. 144.

(*i*) *See* CURATE.

while he performs the duties of the benefice. The sequestrator must also pay out of the profits the salary payable to any duly licensed curate of the church of the benefice in respect of duties performed by him as such during four months before the date of the receiving order, not exceeding 50*l*. But nothing in this section (*k*) is to affect the operation of the Dilapidations Act, 1871, or the Sequestration Act, 1871, or any mortgage duly created under any Act before the commencement of the bankruptcy (*k*). A discharge does not relax a sequestration so long as debts provable in the bankruptcy remain unpaid (*l*).

A sequestration to enforce residence (*q. v.*) can only be issued after monition. If such sequestration continues for a whole year commencing from the date of the sequestration order (*m*), or there are two such sequestrations within two years, the benefice becomes void (*n*). By the Benefices Act, 1898, in the case of incumbents presented or collated after 31st December, 1898, if, on bankruptcy, or in aid of any writ of execution against property, the benefice of any such incumbent is sequestrated within twelve months after his institution, or if such sequestration, if issued after that period, continues for the space of one whole year, or if any such incumbent incurs two such sequestrations in the space of two years, the benefice shall, unless the bishop in the manner and within the time to be prescribed otherwise direct, become void, and sect. 58 of the Pluralities Act, 1838, shall apply in like manner as if the benefice had become void under that section (*o*).

(As to sequestration during a vacancy, *see* BENEFICE.)

SEXTON, or Sacristan, the keeper of things belonging to Divine worship. At common law he has a freehold in his office (*p*).

(*k*) Sect. 52 of Bankruptcy Act, 1883.

(*l*) *Lawrence* v. *Adams*, [1896] W. N. 158; P. 244; *Ex parte Chick* (1879), 11 Ch. D. 731.

(*m*) *Bartlett* v. *Kirwood* (1853), 2 E. & B. 771.

(*n*) 1 & 2 Vict. c. 106, s. 58.

(*o*) 61 & 62 Vict. c. 48. s. 10.

(*p*) 2 Ste. Com. 732; *Reg.* v. *In-*

Duties.—To keep the church and pews cleanly swept and sufficiently dried; to make graves, and open the vaults for the burial of the dead; to provide, under the churchwardens' directions, candles, &c., for lighting the church, bread and wine and other necessaries for the Communion, and also water for baptising; to attend the church during Divine Service, in order to open the pew doors for the parishioners; to keep out dogs; to prevent disturbances, &c.; and to toll the bell for burials (*q*). He may delegate the performance of these duties to a deputy (*r*).

Appointment.—The presumption at common law seems to be that the right of appointing the sexton is vested in the incumbent and churchwardens together, except in cases where the offices of parish clerk and sexton are united, when the right is presumed to be in the incumbent alone (*s*). By custom, however, the sexton is usually chosen by the incumbent, though sometimes by the parishioners. In parishes coming under the New Parishes Acts, he is to be appointed by the incumbent, and is removable by him with the consent of the bishop for any misconduct (*t*). His remuneration depends upon custom. Where a new burial ground is provided for a parish, the sexton is entitled to continue to perform his duties there (including tolling the bell in the burial-ground chapel) and to receive the accustomed fees, and a burial board is not entitled to refuse to allow him to perform those duties (*u*).

Women may be sextons (*x*), and may vote at the election of sextons (*y*). (*See* PARISH CLERK.)

SICK, Visitation of (*z*). (*See* ABSOLUTION.)

habitants of Liverpool (1789), 3 T. R. 118.

(*q*) Prid. 188—190; and see *Reg.* v. *Inhabitants of Liverpool, ubi sup.*

(*r*) *Burial Board, &c.* v. *Thompson* (1871), L. R. 6 C. P. 445.

(*s*) *Causfield* v. *Blenkinsop* (1849), 4 Ex. 234; 18 L. J. Exch. 361.

(*t*) 19 & 20 Vict. c. 104, s. 9.

(*u*) 15 & 16 Vict. c. 85, s. 32; *Burial Board* v. *Thompson, ubi sup.*; *White* v. *Burial Board* (1885), 16 Q. B. D. 58.

(*x*) Burn.

(*y*) Prid. 188—190; and see *Reg.* v. *Inhabitants of Liverpool, ubi sup.*

(*z*) See Can. 67.

SIDESMAN, or Synodsman, a person appointed to assist the churchwardens. By the canon, two or three or more sidesmen are to be appointed in every parish, but this regulation is not generally observed. They must be "discreet persons." They are appointed at the same time and in a similar way to churchwardens, and make a similar declaration before the ordinary on admission, but no sidesman (or churchwarden) can be compelled to take any oath on quitting office (*a*). If the minister and churchwardens cannot agree, the ordinary appoints. Their duties are to see that the parishioners duly go to church, and to present the names of irregular attendants to the ordinary (*b*).

SIGNIFICAVIT. (*See* DE CONTUMACE CAPIENDO.)

SIMONY (from *Simon Magus* (*c*)), in its true sense, is the procuring of orders or a licence to preach by money or corrupt practices, and in its common sense the obtaining in that way of any ecclesiastical benefice or dignity (*d*). But simony, according to the law of England, is confined within much narrower and not very intelligible limits. Thus, it is simony for anyone to purchase a *next presentation*, the living being vacant (*e*). It is simony for a clergyman to purchase for himself a *next presentation* in any case. But it is not simony for a clergyman to purchase the entire *advowson*, either in his own name or that of a trustee, and present himself, or get himself presented, on the next vacancy; and this is continually done (*f*). Nor is it simony for a clergyman to purchase the life interest of a patron in an advowson (which is a freehold estate), and present himself if any vacancy occurs during such life, although the transaction practically amounts

(*a*) 5 & 6 Will. 4, c. 62, s. 9; and for form, *see* OATH.
(*b*) Can. 90.
(*c*) See Acts viii. 18 *et seq.*
(*d*) 1 Bla. Com. 388.
(*e*) 31 Eliz. c. 6; 12 Anne, st. 2, c. 12, s. 2.
(*f*) *Lowe* v. *Chester* (1883), 10 Q. B. D. 407.

to the purchase of the next presentation (*g*). But under the new Benefices Act, after 1898 such life interest must form the whole interest of the vendor (*h*). And in the same way there is no doubt that a clergyman could, up to 1899, have safely purchased an estate for his own life (which is also a freehold estate), and have presented himself if a vacancy occurred during his life. Also, it is not simony for any person (other than the clergyman to be presented) to buy a next presentation subject to the provisions of the Act of 1898 (*h*), and present any clerk he pleases, and that even if the incumbent be *in extremis*. The purchaser is supposed, however, not to have any particular clerk in view (*i*); hence the difficulty with respect to clauses in wills directing trustees to purchase a next presentation for any particular person (*k*). It is simony to purchase an advowson with a condition that immediate possession shall be given. Resignation bonds (*q. v.*) made after 1908 "on a transfer" (*l*) are apparently simoniacal and invalid (*m*). Formerly, a stipulation by a vendor, who is not the incumbent, that he will pay interest on the purchase-money until the living becomes vacant, did not make the contract simoniacal, if there was no undertaking to procure an avoidance (*n*); but now there must be no agreement "on the transfer" to pay interest for more than three months or to pay anything in respect of the date at which a vacancy occurs (*o*). No pension, sum of money, or benefit whatsoever may be given or taken to bring about an exchange of benefices (*p*); but a stipulation that dilapi-

(*g*) *Walsh* v. *Lincoln* (1875), L. R. 10 C. P. 518.

(*h*) 61 & 62 Vict. c. 48, s. 1 (1) (b). In a family settlement a life interest may be reserved to the settlor, and in a mortgage an equity of redemption. *Ibid.* s. 1 (7).

(*i*) *Fox* v. *Chester*, 3 Bli. N. S. 123.

(*k*) See Lewin on Trusts, p. 104.

(*l*) The expression "transfer" includes any conveyance or assurance passing or creating any legal or equitable interest *inter vivos*, and any agreement for any such conveyance or assurance, but shall not include—(a) a transmission on marriage, death, or bankruptcy, or otherwise by operation of law; nor (b) a transfer on the appointment of a new trustee where no beneficial interest passes.

(*m*) 61 & 62 Vict. c. 48, s. 1 (3) (e).

(*n*) *Sweet* v. *Meredith* (1862), 3 Gif. 610.

(*o*) 61 & 62 Vict. c. 48, s. 1 (3) (c) & (d).

(*p*) 31 Eliz. c. 6, s. 8.

dations should not be made good, is not necessarily simoniacal (*q*). But an agreement to hand over any rent to be received from a tenant of the rectory house has been held to be simoniacal (*r*). Also, there must be no agreement on the transfer for a re-transfer or for postponing payment for more than three months (*s*).

Payment of money is not the only way of committing simony; a promise to marry the patron's daughter in consideration of a presentation, and even an unsuccessful attempt to commit simony, is sufficient, the words of the statute being the *giving* or *promising* "any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly" (*t*).

A transfer *inter vivos* is also not valid unless it is registered in the prescribed manner in the registry of the diocese within one month from its date, but the bishop may extend the time. Also, not more than twelve months must have elapsed since the last institution or admission to the benefice. It is not lawful to offer for sale by public auction any right of patronage, save in the case of an advowson to be sold in conjunction with a manor, or with an estate in land of not less than one hundred acres situate in the parish in which the benefice is situate or in an adjoining parish and belonging to the same owner as the advowson, and any person who offers any right of patronage for sale by auction in contravention of this section, or who bids at any such sale, is liable, on summary conviction, to a fine not exceeding one hundred pounds (*u*).

It will thus be seen that the law upon the subject is, even now, not in a state at all satisfactory to common sense or right feeling. There may be, no doubt, cases of simony in which the moral baseness is obvious enough. But there may be cases—there have been, probably in every one's experience—in which, though the laws against simony have been

(*q*) *Wright* v. *Davies* (1876), 1 C. P. D. 638.
(*r*) *Mosse* v. *Killick* (1881), 50 L. J. Q. B. 300.
(*s*) 61 & 62 Vict. c. 48, s. 1 (3) (a) & (b).
(*t*) 31 Eliz. c. 6, s. 4.
(*u*) 61 & 62 Vict. c. 49, s. 1 (2).

technically transgressed, the transgressors have been men of high character and pure motive, and the transgression itself, but for the law, has been an act free from any taint of moral evil (*x*).

The penalties for a *corrupt presentation* under the statute of Elizabeth, are that the presentation will be void, and that the Sovereign shall have the right to present for that turn; that the persons taking or giving the corrupt consideration shall forfeit and lose the double value of one year's profit of every such benefice; and, further, the person corruptly taking the benefice shall thenceforth be adjudged a person disabled in law from holding the same benefice (*y*). The penalties for a corrupt *institution* or *induction* are of a like character, and the patron becomes entitled to present again (*z*). No title to present by lapse accrues under the Act of Elizabeth but after six months after notice given of such avoidance by the ordinary to the patron (*a*). The penalties for a corrupt *exchange* or *resignation* are that giver and taker shall lose double the value of the sum given and of one year's profits before mentioned (*b*). Heavy penalties are also inflicted for corrupt *ordination* or *licensing to preach* (*c*).

Under the Church Building and New Parishes Acts, the Ecclesiastical Commissioners have power to assign the patronage of or presentation to the churches of new parishes in return for endowment, but no such arrangement is simoniacal (*d*). Also, although, as a general rule, no spiritual person can sell or assign any patronage or presentation belonging to him by virtue of his spiritual office (*e*), he can do so for the purpose of forming new parishes or augmenting a living (*f*).

A declaration that he has not committed simony has to be made by every person instituted or collated to any benefice,

(*x*) *Per* Lord Coleridge, L. C. J., in *Walsh* v. *Lincoln*, *ubi sup.*
(*y*) 31 Eliz. c. 6, s. 4.
(*z*) *Ibid.* s. 5.
(*a*) *Ibid.* s. 6.
(*b*) *Ibid.* s. 8.
(*c*) *Ibid.* s. 10.
(*d*) 32 & 33 Vict. c. 94, ss. 12 and 13.
(*e*) 3 & 4 Vict. c. 113, s. 42.
(*f*) 9 & 10 Vict. c. 88.

or licensed to any perpetual curacy, lectureship, or preachership (*g*). It is now in the following form:—

I, C. D., hereby solemnly and sincerely declare in reference to the presentation made of me to the rectory (or vicarage, &c.) of as follows:—

"(1.) I have not received the presentation of the said rectory (or vicarage, &c.) in consideration of any sum of money, reward, gift, profit, or benefit directly or indirectly given or promised by me, or by any person to my knowledge or with my consent, to any person whatsoever, and I will not at any time hereafter perform or satisfy any payment, contract, or promise made in respect of that presentation by any person without my knowledge or consent.

"(2.) I have not entered, nor, to the best of my knowledge and belief, has any person entered, into any bond, covenant, or other assurance or engagement, otherwise than as allowed by sections one and two of the Clergy Resignation Bonds Act, 1828, that I should at any time resign the said rectory (or vicarage, &c.).

"(3.) I have not by myself, nor, to my knowledge, has any person on my behalf, for any sum of money, reward, gift, profit, or advantage, or for or by means of any promise, agreement, grant, bond, covenant, or other assurance of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly procured the now existing avoidance of the said rectory (or vicarage, &c.).

"(4.) I have not, with respect to the said presentation, been party or privy to any agreement which is invalid under section 1, subsection 3, of the Benefices Act, 1898."

Dated this day of 18 . C. D.

And if any person knowingly makes any false statement in this declaration he is guilty of a misdemeanour and liable to punishment for perjury (*h*); and any clergyman who commits a breach of the promissory part of his declaration

(*g*) 28 & 29 Vict. c. 122, s. 5.

(*h*) 61 & 62 Vict. c. 48, s. 1 (4). The form in use up to 31st December, 1898, runs as follows:—

"I, A. B., solemnly declare that I have not made by myself, or by any other person on my behalf, any payment, contract, or promise of any kind whatsoever, which to the best of my knowledge and belief is simoniacal, touching or concerning the obtaining the preferment of , nor will I at any time hereafter perform or satisfy in whole or in part any such kind of payment, contract, or promise made by any other without my knowledge or consent."

28 & 29 Vict. c. 122, s. 2. The original oath will be found in Can. 40.

is guilty of an offence under the Clergy Discipline Act, 1892 (*q. v.*) (*i*).

Proceedings in respect of simony must still be taken under the Church Discipline Act, 1840, not that of 1892 (*k*).

SINECURE is a benefice *sine curâ*, without cure of souls; *e.g.*, a sinecure rector was an ecclesiastical rector who used to receive the greater part of the emoluments of a benefice without performing any spiritual duties.

By 3 & 4 Vict. c. 113, all ecclesiastical rectories without cure of souls in the sole patronage of her Majesty, or of any ecclesiastical corporation, aggregate or sole, where there is a vicar endowed or a perpetual curate, were, immediately upon a vacancy, to be suppressed; and powers were conferred on the Ecclesiastical Commissioners to purchase any such rectories in the patronage of other persons, and to suppress the same on the first vacancy (sect. 48). And in any case where it shall appear to be expedient, the whole or any part of the emoluments of such rectory may be annexed to the vicarage or curacy dependent thereon, and any such vicarage or curacy may be constituted a rectory with cure of souls; also, where a sinecure rectory had been held for twenty years before the Act, together with the vicarage dependent thereon, the two were to be permanently united (sect. 55).

SINGING. It was the custom of Christians in the earliest times to sing hymns; generally in alternate verses. Afterwards, church music became so very technical and difficult that the congregations were unable to join in it. This abuse was done away with at the Reformation. Plain congregational music became the rule in parish churches, elaborate choral services being reserved for cathedrals; thus, an anthem is not necessary except in "quires and places where they sing."

(*i*) 61 & 62 Vict. c. 49, s. 1 (*5*).
(*k*) *Beneficed Clerk* v. *Lee*, [1897] A. C. 226. *And see* CLERGY DISCIPLINE ACT, 1892.

Various portions of the Prayer Book Service may be either said or *sung*, and this is in the discretion of the minister. The churchwardens have no right to interfere, their office being one of observation and complaint only. The parts of the Service which are sung ought to be so rendered that "the same may be as plainly understood as if it were without singing" (*l*).

A musical instrument (*m*) may be used as an accompaniment, if thought necessary by the minister, in whose hands all musical arrangements lie; but the mere fact that there is an organ in a church does not necessitate the appointment of an organist, or even the use of the organ (*q. v.*). An organist (*q. v.*) is not a necessary officer of a church (*n*).

A "hymn or such like song" may be sung either at the beginning or at the end of Morning or Evening Prayer, in the best melody and music that may be conveniently devised, having respect that the sense of the hymn may be understood and perceived (*l*); and no doubt a hymn may be substituted for the anthem above referred to. The Privy Council has now decided that a hymn may be sung at any convenient time, provided the Service is not thereby let or hindered, and on this ground sanctioned the interpolation of the *Agnus Dei* at the Communion Service in spite of the fact that it was expressly omitted from the Prayer Book of 1552 (*o*).

Under the law as it stood before 1892, it would seem that no less than *nine* hymns might have been legally sung at the ordinary morning service, consisting of Morning Prayer, Litany, Ante-Communion Service, and sermon; and *five* at the ordinary evening service.

SI QUIS is a notice (similar to banns) that a certain person is a candidate for priest's or deacon's orders. It is to

(*l*) Injunctions of 1559. See judgment in *Hutchins* v. *Denziloe* (1702), 1 Hag. Cons. R. p. 178.

(*m*) *See* ORNAMENTS.

(*n*) *Reg.* v. *St. Stephen's* (1844), 14 L. J. Q. B. 34.

(*o*) *Read* v. *Bishop of Lincoln*, [1891] P. 63; [1892] A. C. 660; and see *Elphinstone* v. *Purchas* (1870), L. R. 3 A. & E. 98.

be read in the church or chapel of the place where the candidate resides at least two Sundays before the day of ordination, and attested by the officiating minister. It is in the following form:—

"Notice is hereby given that M. N. [of College, B.A.], now resident in this parish [*or* chapelry], intends to offer himself as a candidate for the holy office of a deacon [*or* priest] at the ensuing ordination of the Lord Bishop of ; and if any person knows any cause or just impediment why the said M. N. ought not to be admitted into holy orders [*or* the holy order of priests], he is now to declare the same, or to signify the same forthwith to the Lord Bishop of .

"We certify that, on Sunday, the day of instant, the foregoing notice was publicly and audibly read by the undersigned C. D. in the church [*or* chapel] of , in the time of Divine Service, and that no impediment was alleged.

"Witness our hands this day of 189 .

"C. D., Officiating Minister.
"E. F., Churchwarden (*p*)."

SOVEREIGN is the supreme head of the established Churches of England (*q*) and Scotland; the ultimate Court of Appeal of the English Church; and the supreme governor (*r*) in these realms over all persons in all causes as well ecclesiastical as temporal. He (or she) is *persona sacra* (*s*), and must be a Protestant (*t*).

The peculiar duties and privileges of the Sovereign with respect to the Church of England are to appoint the bishops and receive their homage; to receive the profits of a bishopric during a vacancy; to assemble Convocation (*q. v.*), and to ratify new canons (*q. v.*); to visit and receive the resignations of archbishops; to visit various places exempt from episcopal visitation (*q. v.*); to hear appeals (*q. v.*); and

(*p*) Lond. Dio. Book (1890), p. 905.

(*q*) This title was first attributed to the King of England by the clergy in Convocation, and afterwards ratified by Parliament. See Com. Dig. tit. Prerogative, D. 21. Queen Elizabeth adopted the title of Supreme Governor; 1 Eliz. c. 1.

(*r*) 1 Eliz. c. 1; Can. 55. *And see* SUPREMACY.

(*s*) Com. Dig. tit. Ecclesiastical Persons.

(*t*) *See* PROTESTANT SUCCESSION.

to exercise various other powers formerly vested in the Pope of Rome; but he is not a "minister of the Word." (Art. 37.) During the minority of a Sovereign, a Regent is appointed (*u*).

SPECIAL SERVICES. A special service is contained in the Prayer Book for Accession Day, and there were formerly services for the anniversaries of the "Martyrdom of King Charles" and "Gunpowder Plot." The forms for the Coronation Service and for the consecration of churches are not in the Prayer Book (*x*). (As to forms for special occasions, *see* PUBLIC WORSHIP.)

STAMP DUTIES. The following duties are payable under the Stamp Act, 1891 (*y*):—

	£	*s.*	*d.*
Copy or Extract (*certified*) of or from any register of births, baptisms, marriages, deaths, or burials - - - - -	0	0	1
Exemptions.—(1) Copy or extract furnished by any clergyman, registrar, or other official person pursuant to and for the purposes of any Act, or furnished to any general or superintending registrar under any general regulation.			
(2) Copy or extract for which the person giving the same is not entitled to any fee or reward.			
And see section 64.			
Faculty or Dispensation of any other kind (than for admitting a notary public, and also the licences hereinafter mentioned)—			
In England - - - - - -	30	0	0
In Ireland - - - - - -	25	0	0

(*u*) See Regency Act, 1910 (1 Geo. 5, c. 26). The English Protestant Declaration was dropped in this Act, but the Regent has to swear to maintain the settlement of the true Protestant Religion, and the Church of Scotland established by law, and generally to maintain the laws, and cannot be a Roman Catholic; s. 5, Sched., and PROTESTANT SUCCESSION.

(*x*) *See* ANOINTING; PARISH CHURCH.

(*y*) 54 & 55 Vict. c. 39.

	£	s.	d.
Grant or Letters Patent under the Great Seal.			
(2) Of a *congé d'élire* - - - -			
(3) Of the Royal assent to or presentation of any person to be archbishop or bishop - - - - - - -			
(4) Of or for the restitution of the temporalities of any archbishop or bishop -	30	0	0
(5) Of any other honour, dignity, or promotion whatsoever - - - -			
And see section 74.			
Licence for Marriage.			
Special. In England or Ireland - -	5	0	0
Not special. In England - - -	0	10	0
Licence under the seal of any archbishop, bishop, chancellor, or other ordinary, or by any ecclesiastical court in England or Ireland, or by any presbytery or other ecclesiastical power in Scotland:			
(1) To hold the office of lecturer, reader, chaplain, church clerk, chapel clerk, parish clerk, or sexton - - - - -			
(2) For licensing a building for the performance of Divine Service within an ecclesiastical district formed under the provisions of the New Parishes Acts -	0	10	0
(3) For licensing any chapel for the solemnization of marriages therein, pursuant to the provisions of the Act 6 & 7 Will. 4, c. 85 - - - - - - - -			
(4) For any other purpose - - -	2	0	0
Exemptions.—(1) Licence granted to any spiritual person to perform Divine Service in any building approved by the archbishop or bishop in lieu of a church			

or chapel whilst the same is under repair or is rebuilding, or in any building so approved for the convenience of the inhabitants of a parish resident at a distance from a church or consecrated chapel.

(2) Licence to hold a perpetual curacy.

(3) Licence to a stipendiary curate, wherein the annual amount of the stipend is specified.

(4) Licence for the purpose of authorizing or enabling any person to preach or exercise any other spiritual function, not being a licence to hold the office of lecturer, reader, or chaplain, and there being no salary or emolument for or attached to the exercise of the function for which such licence is granted.

(5) Licence by any ecclesiastical authority for licensing or authorizing any matter relating to a consecrated building or ground, or anything to be constructed, set up, taken down, or altered therein, or to be removed therefrom.

STOLE (*z*). The word "stole" is very ancient. It originally meant garb or equipment, then the characteristic dress of the Roman matron, then handkerchief, or *orarion*, and consisted of an oblong piece of linen. Afterwards, ornaments and embroidery were added, and it was for ecclesiastical purposes cut down to its present shape. It is illegal in the Church of England (*a*). The "tippet" (*q. v.*) is often popularly called "stole."

(*z*) See Smith's Dict. of Chr. Ant.

(*a*) *Enraght* and *De la Bere cases* (1882), 7 App. Cas. 240; 6 P. D. 157; *Green's case* (1882), 8 P. D. 79; *Elphinstone* v. *Purchas* (1870), 3 A. & E. 66.

SUFFRAGAN. Strictly speaking, all the bishops of a province are suffragans or helpers to the chief or archbishop, but the term is now usually applied to an inferior order of bishops who assist the regular diocesans, and who may be called episcopal curates. They correspond to the *chorepiscopoi* or country bishops of the early Church.

Their election and consecration is regulated by the Suffragan Bishops Acts, 1534, 1888 and 1898. When a bishop desires to have a suffragan, he petitions his Majesty to appoint one of two spiritual persons named by him; and, upon such presentation, his Majesty has power to give such person the title of bishop suffragan of such see as he may think convenient, so that it be within the same *province* (*b*). After the title is given, the King sends his letters patent to the archbishop of the province requiring him to consecrate the said person within three months (*c*), unless he is already a bishop (*d*). Two bishops or suffragans must assist at the consecration (*e*).

The suffragans take only such profits, jurisdiction, and authority as is licensed and limited to them by their diocesans by commission under their seals, and no suffragan may use any jurisdiction ordinary or episcopal power otherwise for longer time than shall be limited by such commission, on pain of a *præmunire* (*f*).

Before 1888, only certain towns mentioned in the statute of Henry could be taken as sees for suffragans; consequently, the two suffragans of the Bishop of London were called Bishops of Bedford and Marlborough, both towns at a considerable distance from London and out of the diocese; but now any town, as the King in Council may direct, may be taken for the see of a bishop suffragan (*g*), and his Majesty may by writing under his Royal sign manual change the see of any suffragan nominated before the 24th December, 1888, for one of the new towns.

(*b*) 26 Hen. 8, c. 14, ss. 1 and 2.
(*c*) *Ibid.* ss. 3—5.
(*d*) 61 & 62 Vict. c. 11.
(*e*) 26 Hen. 8, c. 14, s. 7.
(*f*) *Ibid.* s. 6.
(*g*) 51 & 52 Vict. c. 56.

Most suffragans continue to hold their livings after consecration; and according to the statute of Henry, for the better maintenance of their dignity, may have two benefices with cure (*h*).

By the same statute residence "over the diocese" is to serve a suffragan as sufficiently as if he were resident upon any other his benefice (*i*). But it may be doubted whether he does not now come within the provisions of the Pluralities Acts. There were no suffragans in 1838, otherwise they would probably have been put in the same category as deans and archdeacons. Commendams (*q. v.*) have been abolished; and it does not seem to be consistent with the modern law that an incumbent should, in any case, take the profits of a benefice and be under no obligation to reside (*k*). They are not entitled to sit in the Upper Houses of Convocation (*q. v.*).

SUICIDE. A suicide or *felo de se* is one who feloniously murders himself. The former barbarous method of burial in a highway with a stake driven through the body was abolished in 1824; and now, by the Interments (Felo de se) Act, 1882 (*l*), the burial is to take place in the churchyard or other burial ground of the parish or other customary place, as if the verdict of *felo de se* had not been found (sect. 2); and such interment may be made in any of the ways prescribed by the Burial Laws Amendment Act, 1880; but save as aforesaid nothing is to authorize the performing of any of the rites of Christian burial, or to alter the laws or usages relating to such burials (sect. 4). By the rubric, the Church burial office may not be used for any that have laid violent hands upon themselves. In most cases, however, the jury return a verdict of "suicide while of unsound mind," which obviates the legal consequences of being *felo de se*, and enables the clergyman to perform the funeral service (*m*).

(*h*) 26 Hen. 8, c. 14, s. 8.
(*i*) *Ibid.* s. 7.
(*k*) *See* RESIDENCE.
(*l*) 45 & 46 Vict. c. 19.
(*m*) *See* BURIAL.

The clergyman has no right to go behind the decision of the coroner's jury. "The minister of the parish hath no authority to be present at viewing the body or to summon or examine witnesses; and therefore he is neither entitled nor able to judge in the affair, but may well acquiesce in the public determination without making any private inquiry" (*n*).

SUNDAY. (*See* LORD'S DAY.)

SUNDAY SCHOOLS. (*See* CATECHISM.)

SUPERSTITIOUS USES. (*See* CHARITIES.)

SUPREMACY. By Queen Elizabeth's Act of Supremacy, whoever refused to take an oath acknowledging the King's supreme power in all matters, civil as well as ecclesiastical, was incapacitated from holding any office or benefice; but this Act has now been repealed so far as relates to benefices, curacies, lectureships, or preacherships (*o*); and the oath of supremacy has been changed into an oath of allegiance only (*p*). This change does not alter the fact that the Sovereign *is* the head or supreme governor of the Church of England.

SURPLICE, a white linen gown with wide sleeves, probably the most ancient vestment used by the Church, though the name dates only from about the twelfth century (*q*). Its sole use at all "ministrations" was first made compulsory by Act of Parliament in 1552. It was much objected to by the Puritans at and after the Reformation. The feeling on the question was so strong that in 1689 the commissioners appointed to revise the Prayer Book, with a view to the relief of Protestant Dissenters, proposed the substitution of the fol-

(*n*) 1 Burn, 267.
(*o*) 28 & 29 Vict. c. 122, sched.; and see sect. 9.
(*p*) 31 & 32 Vict. c. 72, s. 8. *See* OATH.
(*q*) *See* ALB.

lowing rubric for the existing one:—"Whereas the surplice is appointed to be used by all ministers in performing Divine offices, it is hereby declared that it is continued only as being an ancient and decent habit. But if any minister shall declare to his bishop that he cannot satisfy his conscience in the use of the surplice, in that case the bishop shall dispense with his using it, &c." (*r*). This recommendation was never carried into effect, and the surplice is still compulsory, save that the black gown (*q. v.*) may be worn for sermon or lecture. (*See* VESTMENTS; ROCHET; ALB.)

SURPLICE FEES are fees payable to the clergy on burials (*q. v.*) and marriages (*q. v.*), and formerly on baptisms (*q. v.*). It has been said that surplice fees are only due by immemorial custom, and that an express contract to pay such a fee is void; but the current of authorities is the other way (*s*).

SURROGATE. One that is substituted or appointed in the room of another, as by a bishop, chancellor, judge, &c., especially an officer appointed to dispense licences to marry without banns. (*See* JUDGES.)

SUSPENSION. A punishment inflicted on the clergy for offences of a lighter character, and during which they cannot exercise their offices or take the profits of their benefices. A sentence of suspension *ab officio et a beneficio* is, therefore, a sentence of degradation (*q. v.*) and deprivation (*q. v.*) of a temporary nature (*t*).

(*r*) For the details and history of the Comprehension Bill of 1689, see Macaulay's Hist. of Eng., Vol. I. c. 11. It was proposed that a declaration similar to the "Declaration of Assent" (*q. v.*) should be adopted; that Presbyterian ministers might, without re-ordination, become priests of the Established Church of England; that the sign of the cross, and godfathers and godmothers, at baptisms might be dispensed with; and that persons who had a scruple about receiving the Eucharist kneeling might receive it sitting.

(*s*) *Nevill* v. *Bridger* (1874), L. R. 9 Ex. 214, and cases there cited.

(*t*) Gib. 1047; *Morris* v. *Ogden* (1869), L. R. 4 C. P. 687.

It has been held that the profits during a suspension go to the bishop as chief pastor of the church, and, subject to providing for the services, for his own use (*u*). This, however, seems inconsistent with the principle of the law abolishing *commendams* (*q. v.*). The proper destination of the profits would be Queen Anne's Bounty, or local charities, whither, no doubt, the money usually finds its way.

Suspension is usually, but not necessarily, supplemented by sequestration (*q. v.*).

Suspension of the laity from attendance at the services of the Church (*ab ingressu ecclesiæ*) is now obsolete (*x*).

SYNOD. Any assembly, council, or convocation of ecclesiastical persons, from a council of the Universal Church to a diocesan meeting. The Churches of Russia and Ireland are governed by synods; also the Church of Scotland, in which the synod is composed of several presbyteries.

What is known as the Synod of England consists of the two convocations or provincial synods of Canterbury and York (that is, certain of the clergy), assembled in the name of Christ and by royal authority. It claims to form the true Church of England by representation (*y*), but this is not the case, as the Church of England consists of laity as well as clergy, and the former are not bound by the proceedings or by canons ratified by the King (*z*). Pan-Anglican synods or conferences have been held of late years consisting of bishops of the Anglican communion throughout the world.

In the primitive Church the laity were present at all synods (*a*).

SYNODALS are ancient visitation fees, forming, like procurations (*q. v.*), a charge upon tithe owners. They

(*u*) *Bunter* v. *Cresswell* (1850), 19 L. J. Q. B. 357; *Re Thakeham* (1871), L. R. 12 Eq. 494.

(*x*) *See* EXCOMMUNICATION.

(*y*) CANS. 139—141. *And see* CANON LAW.

(*z*) *Middleton* v. *Crofts* (1736), 2 Atk. 650, 669; *Case of Convocations* (1610), Coke, Rep. 72, 73. *And see* CONVOCATION.

(*a*) Salkeld, 412.

are still collected in some places with procurations and under the like authority (*b*).

TAXES. Ecclesiastical property, in addition to its liability for first fruits and tenths, is, like other property, subject to the usual rates and taxes. Churches and chapels and other places of religious worship are exempt from poor rate, but not churchyards (*c*).

Poor rates have been imposed on the clergy, not only in respect of their glebes, but also in respect of their tithes, even tithes of fish, and apparently even oblations and pensions (*d*). There does not appear, however, to be any authority for the rating of surplice fees (*e*). Also the money payments substituted for tithes in the city of London are not rateable to the poor rate (*f*).

Tithe, tithe rentcharge, or any composition in lieu of tithe is subject to all parliamentary, parochial, county and other rates, charges, and assessments, unless expressly exempted (*g*).

These were formerly assessed upon the occupier of the land out of which the rentcharge issued, and might have been recovered from him as if they were poor rate. The occupier could deduct such payment from the next rent payable to his landlord, leaving him to recover it from the owner of the rentcharge (*h*). But this provision is now repealed by the Tithe Act, 1891, by which it is enacted that—"(1) Any rate to which tithe rentcharge is subject shall be assessed on and may be recovered from the owner of the tithe rentcharge, in the like manner and by the like process as on and from any

(*b*) See *Shepherd* v. *Payne* (1862), 31 L. J. C. P. 297.

(*c*) 3 & 4 Will. 4, c. 30; *Winstanley* v. *North Manchester, &c.*, [1910] A. C. 7. *See* CHURCHYARDS.

(*d*) See 42 Geo. 3, c. 116.

(*e*) Phill. E. L. 1746.

(*f*) *Esdaile* v. *Assessment, &c.* (1887), 19 Q. B. D. 431. *And see* TITHES.

(*g*) 6 & 7 Will. 4, c. 71, ss. 69, 70; *Mitchell* v. *Fordham* (1827), 6 B. & C. 274. As to land tax, see *Carr* v. *Fowle*, [1893] 1 Q. B. 251. By the Tithe Rentcharge (Rates) Act, 1899, the owner of tithe rentcharge attached to a benefice is liable to pay only one-half of certain of the rates defined by sect. 9 of the Agricultural Rates Act, 1896. See 62 & 63 Vict. c. 17.

(*h*) 6 & 7 Will. 4, c. 71, s. 70.

occupying ratepayer; and so much of any Act as authorizes any rate on tithe rentcharge to be assessed on or recovered from the occupier of any lands out of which the tithe rentcharge issues is hereby repealed. (2) If the collector of the rate satisfies the County Court that he is unable to recover in manner aforesaid any rate assessed on the owner of any tithe rentcharge, the Court may, after such service on the owners of the tithe rentcharge, and of the lands out of which the tithe rentcharge issues, as may be prescribed, and after hearing such owners, if they appear and desire to be heard, order the owner of the lands to pay such tithe rentcharge to the collector until the amount of the rate, and any costs allowed by the Court, are fully paid; and the order may be executed as if it were an order under this Act for the payment of a sum due on account of the tithe rentcharge. (3) The Court may, if satisfied that the circumstances justify it, make such order as aforesaid in respect of any future rate, either generally or during the time limited by the order. (4) The expression 'rate' in this section means a poor rate, highway rate, general district rate, borough rate, and every other rate assessed on an owner of tithe rentcharge by a public authority for public purposes; and the expression 'collector' means the overseer, surveyor of highways, rate collector, or other person authorized, for the time being, to collect the rate" (*i*).

Also, when the rentcharge exceeds two-thirds of the annual value of the land, and there is a remission in consequence, there is a corresponding remission of any then current rate (*k*).

Tithe rentcharge is rated to the poor rate upon its *net annual* value. In estimating this, deductions are allowed for the expenses "necessary to maintain the property in a state to command such rent" (*l*); but the rateable value to the poor rate must not be confounded with the remunerative

(*i*) 54 & 55 Vict. c. 8, s. 6. (*k*) See sect. 8, under TITHES.
(*l*) 6 & 7 Will. 4, c. 96, s. 1.

value to the incumbent (*m*); the idea being that the rateable value of the rentcharge is such a sum as the tithes might reasonably be expected to let for from year to year free of tenant's rates and taxes, and deducting ecclesiastical dues (*n*).

The only deductions allowed are those which can be found in the Act itself, or arise from some principle of law applicable to all cases (*o*). Such are—the *necessary* and, perhaps, the *usual* legal or other expenses of collection (*p*); losses by non-payment; the usual tenant's rates and taxes, including property tax, lighting rate, and general rate; and the proportion of first fruits, tenths, and ecclesiastical dues, in the ratio of the rentcharge to the total emoluments of the living. But curate's stipend and land tax may not be deducted (*q*).

The clergy have to pay income tax on all moneys received by them in their professional capacity, inclusive of Easter offerings (*r*).

Incumbents are also rateable for the repair of highways (*s*), and to general and lighting rates.

Formerly the clergy taxed themselves (*t*).

TEN COMMANDMENTS, The, must be set up on the east end of every church and chapel where the people may best see and read the same, and other chosen sentences should be written upon the walls of the said churches and chapels in places convenient. If the Commandments are removed they must be replaced (*u*). It is illegal to cover them up with a curtain, or in any way to prevent their being seen and read (*x*). The Privy Council has, however, decided that it is sufficient if the Ten Commandments are set up as

(*m*) *Queen* v. *Sherford* (1867), L. R. 2 Q. B. 503. As to old law, see *Reg.* v. *Goodchild* (1858), E. B. & E. 1.

(*n*) *Queen* v. *Capel* (1840), 9 L. J. Q. B. 328; 6 & 7 Will. 4, c. 96, s. 1.

(*o*) *Mersey Docks, &c.* (1865), 11 H. L. C. at p. 511.

(*p*) *Stevens* v. *Bishop* (1888), 20 Q. B. D. 442, p. 448.

(*q*) *Queen* v. *Sherford* (1867), L. R. 2 Q. B. 503. As to old law, see *Reg.* v. *Goodchild* (1858), E. B. & E. 1.

(*r*) *Cooper* v. *Blakiston*, [1907] 2 K. B. 688. See Bill of 1911.

(*s*) See 5 & 6 Will. 4, c. 50.

(*t*) *See* CONVOCATION.

(*u*) Can. 82; *Kensit* v. *Ethelburga*, [1900] P. 80.

(*x*) *St. Andrew's* (1909), 25 T. L. R. 408.

nearly according to the canon as the nature of the structure will permit (*y*). The Ten Commandments form part of the English Communion Service.

TENTHS are the tenth part of the annual profit of a spiritual preferment for the second and succeeding years, according to the valuation in the "King's Books." They are now to be paid to the Governors of Queen Anne's Bounty. (As to exemptions, &c., *see* FIRST FRUITS.)

TIPPET is an article of dress worn about the neck—a kind of scarf, usually made of fur, cloth, or linen. As an ecclesiastical vestment in the Church of England a black tippet is worn by all ministers, the graduates' being of silk, the non-graduates' "not of silk" (*z*). Canon 74 directs graduate clergy to wear hoods *or* tippets, but by custom they usually wear both. (*See* HOOD; STOLE.)

TITHES. In apostolic times ministers were supported by voluntary contributions of indefinite amount (*a*). Later, the Jewish system of tithes was enjoined by the Church, but the payment of them continued for centuries to be voluntary. Then there came a time when the State stepped in and made the payments, which hitherto had been voluntary, *compulsory on all*. This took place in France in 779 A.D., and in England, as is supposed, somewhat later. Thus, as Milman says, "the tithe was by no means a spontaneous votive offering of the whole Christian people. It was a tax imposed by imperial authority and enforced by imperial power" (*b*). In other words, it was a State endowment of the Christian religion, which was intended to be mainly devoted to the relief of the poor. For not tithes in parti-

(*y*) *Liddell* v. *Beal* (1860), 14 Moo. P. C. 16.

(*z*) Cans. 58 and 74; and Miller's Ecc. Law.

(*a*) 1 Cor. xvi. 1, 2; Acts ii. 44, iv. 34. There is no injunction to pay *tithes* in the New Testament.

(*b*) Vol. 2, p. 292, cited in Easterby on Tithes. And see Stubbs, Const. Hist. I. 228; and Kemble, Saxons in England, vol. 2, c. 10.

cular, but all Church property of every kind was, from early times and down, even, to the fourteenth century, described as the "patrimony of the poor" (*c*), and the clergy were regarded as almoners.

At first the taxpayer paid his tithes to any church he pleased, but after the division of dioceses into parishes the tithes were allotted to the parish priest. Owing to the machinations of the monks in the Middle Ages, the tithes were very largely drawn into the coffers of religious houses, and the parochial clergy were deprived of the benefit of them. This gave rise to what are known as *appropriated tithes* and the distinction between rector and vicar (*q. v.*).

Tithes are *primâ facie* due to the rector, whether lay or clerical, unless there is a special exemption, or a portion of the tithes belong to some other person, who is called a portionist. An incumbent of one parish can be a portionist in another (*d*).

Tithes may be described to be a right to the tenth part of the produce of lands, the stock upon lands, and the personal industry of the occupiers (*e*). If the ground be not sown, if the farm be not stocked, if the fruits be not gathered, and *à fortiori* if the land be washed away by the sea, or otherwise destroyed by natural casualty, no tithe can possibly arise (*f*), nor can the rentcharge which is substituted for it (*g*). There is no *personal* liability by anybody to pay tithe or tithe rentcharge (*h*), but as between landlord and tenant, if payable at all, it must be paid by the "landlord" (owner). Formerly it was payable by the tenant (*i*), the law having been altered by the Tithe Act, 1891 (*k*).

Tithes are incorporeal hereditaments (*l*), and are of three kinds—(1) *prædial*, arising merely and immediately from

(*c*) Lord Selborne, Ancient Facts, &c., p. 23, citing Van Espen.
(*d*) 3 Cruise, 47, 48.
(*e*) *Ibid.* 37.
(*f*) *Ibid.* 38; and 6 & 7 Will. 4, c. 71, s. 85.
(*g*) *Bailey* v. *Badham* (1885), 30 Ch. D. 84.
(*h*) 6 & 7 Will. 4, c. 71, s. 67; 54 & 55 Vict. c. 8, s. 2 (9). See *post*.
(*i*) See 14 & 15 Vict. c. 25, s. 4.
(*k*) 54 & 55 Vict. c. 8, s. 1. See *post*.
(*l*) And therefore "land" within the Settled Land Act. *Re Esdaile* (1886), W. N. 47.

the vegetable produce of the land; because, a piece of land being called in the canon law *prædium*, whether it was arable, meadow, or pasture, the fruit or produce thereof is called *prædial;* nor is any allowance made for the trouble and expense of raising any species of vegetable which yields tithe: (2) *mixed*, arising from the produce and increase of animals nourished by the land: (3) *personal*, the profits which arise from the labour and industry of man in some trade or employment, being the tenth of the clear profits after deducting all expenses. Tithes are again divided into *great, i.e.*, the prædial tithes of greater value, as corn, hay, wood; and *small, i.e.*, other prædial tithes, as hops, potatoes, &c., and mixed and personal tithes. Prædial tithes are due as of common right, but mixed and personal tithes by custom only; therefore, unless they have been usually paid, they are not demandable (*m*). As a general rule the great tithes belong to the rector, and the small tithes to the vicar.

Exemption from Tithes.—The Sovereign, rectors, and vicars are exempt; but if the incumbent of one parish holds glebe in another, he pays tithes on it (*n*). The land itself gets no discharge by having been in the hands of privileged owners; therefore tenants of privileged owners were formerly liable.

Land may be freed from tithes by one of the five following methods:—

(1.) *Non-payment.*—Mere non-payment, apart from statute, affords no exemption, even against a lay impropriator. Under the Tithe Prescription Act, 1832, where "the render of tithes in kind is demanded" (*o*), which applies to the majority of cases, non-payment for a period of sixty years (or thirty years, subject to proof of prior payment) creates a valid and indefeasible exemption, and it is not necessary to show a legal origin of such exemption.

(*m*) 3 Cruise, 39.

(*n*) *Warden of St. Paul's* v. *The Dean* (1817), 4 Price, 65, p. 78. The question whether a particular piece of land is or is not subject to tithe, makes a considerable difference to its value. See *Mansel-Lewis* v. *Lees* (1910), 102 L. T. 237.

(*o*) 2 & 3 Will. 4, c. 100, s. 1; *Payne* v. *Esdaile* (1888), 13 App. Cas. 613.

Where there has been non-payment of a part only of the tithes, a similar exemption extends to such part (*p*). In cases where (as in the city of London) the payments are "periodical sums charged on land" the Statutes of Limitations apply, and the claim is barred at the end of twelve years if no acknowledgment is given in writing in the meantime (*q*).

(2.) *Modus decimandi, i.e.*, a partial exemption from tithes where, by immemorial usage, a particular and exceptional manner of tithing has been allowed, *e.g.*, twopence per acre for the tithe of land (*r*).

(3.) *Composition, e.g.*, a gift of land or other real recompense (called a real composition) to the parson or vicar in lieu of tithes (*s*). Such of these compositions as were duly made under a decree have been confirmed by statute (*t*). Land not exceeding twenty acres may now be given in lieu of tithes or tithe rentcharge (*u*). In the city of London tithes were compounded for a fixed periodical money payment in the reign of Henry VIII. (*x*), and a special Act passed in 1881 (*y*) provided that such payments should be levied and collected in the same manner as poor rates. These payments are excluded from the operation of the Tithe Acts, and the owner is not rateable to the poor rate in respect of them (*z*).

(4.) *Redemption or merger*, as to which, see *post*.

(5.) *Commutation* into tithe rentcharge (*q. v.*).

Magistrates have power to make orders as to custody of tithe maps and documents (*a*).

(*p*) *Salkeld* v. *Johnston* (1849), 1 Mac. & G. 242; 2 & 3 Will. 4, c. 100, s. 1.

(*q*) *Payne* v. *Esdaile, ubi sup.*; 3 & 4 Will. 4, c. 27, s. 1; 37 & 38 Vict. c. 57.

(*r*) See further as to *modus*, 2 & 3 Will. 4, c. 100; 2 Ste. Com. 739; and Burn.

(*s*) 3 Cruise, 50.

(*t*) 2 & 3 Will. 4, c. 100, s. 2.

(*u*) 6 & 7 Will. 4, c. 71, ss. 29, 62; *Payne* v. *Esdaile* (1888), 13 App. Cas. 613; and see *post*.

(*x*) 37 Hen. 8, c. 12; 22 & 23 Car. 2, c. 15.

(*y*) 44 & 45 Vict. c. cxcvii.; see also 42 & 43 Vict. cc. xciii., clxxvi.

(*z*) *Esdaile* v. *Assessment, &c.* (1887), 19 Q. B. 431.

(*a*) *Lewis* v. *Poole*, [1898] 1 Q. B. 164.

TITHE RENTCHARGE. Nearly all tithes have now been extinguished by commutation into rentcharge, under the provisions of the Tithe Act, 1836, and various amending statutes. The commutation may be effected in two ways—by a voluntary parochial agreement or by compulsory award; and thereupon any question as to exemption or *modus* is settled as provided by the Act (*b*), and the land is absolutely discharged from tithe (*c*). A County Court has jurisdiction, since the Tithe Act, 1891, in actions as to redemption money and expenses (*d*).

The amount of rentcharge payable each year fluctuates according to the average price of corn for the seven years preceding, and the payment varies so as always to equal the then value of the number of bushels of wheat, barley, and oats in equal shares which could have been purchased according to the prices in December, 1836 (*i.e.*, wheat, 7*s.* 0¼*d.*; barley, 3*s.* 11½*d.*; oats, 2*s.* 9*d.* (*e*)), by the sum for which the parish tithes were commuted (*f*). The septennial averages are now ascertained under the provisions of the Corn Returns Act, 1882, and are published in the *London Gazette* in January in every year (*g*). The rentcharge is subject to the same incidents as the tithes they represent (*h*).

There are exceptions to this method of estimating the amount of the charge; thus, formerly, hop grounds, orchards, fruit plantations, and market gardens were subject to an additional rentcharge by way of extraordinary charge, but the Extraordinary Tithe Redemption Acts, 1886 and 1897 (*i*), provided for the fixing of the capital value of the extraordinary charges then existing, and for the substitu-

(*b*) As there are now hardly any commutations to be effected, the mode of doing so is of mere historical interest. See the statutes collected in Chron. Index.

(*c*) 6 & 7 Will. 4, c. 71, ss. 57, 67.

(*d*) *R.* v. *Essex*, [1895] R. 79; 1 Q. B. 31.

(*e*) 1 Vict. c. 69, s. 7.

(*f*) See note (*e*), *supra*.

(*g*) 45 & 46 Vict. c. 37, ss. 10, 19, repealing s. 56 of 6 & 7 Will. 4, c. 71. The average charge is now about 70*l.* per 100*l.*

(*h*) 6 & 7 Will. 4, c. 71, s. 71.

(*i*) 49 & 50 Vict. c. 54; 60 & 61 Vict. c. 23; and see *Simmonds* v. *Heath*, [1894] 1 Q. B. 29; and as to land tax, see *Carr* v. *Fowle*, [1893] 1 Q. B. 251.

tion of a rentcharge of four per cent. on such capital value (which is to be treated as if it were ordinary apportioned tithe rentcharge), and declared that all such lands, newly cultivated after the 25th June, 1886, should be exempt from extraordinary charges under the Tithe Commutation Acts. The Ecclesiastical Commissioners may re-adjust extraordinary charges on the benefice in favour of other benefices (sect. 13); and when the income of a benefice is diminished by the operation of this Act, Queen Anne's Bounty may modify the terms of any mortgage they may hold (sect. 12).

Coppices (*k*), commons (*l*), and lands inclosed from barren heaths and waste land (*m*) are also subject to special regulations.

On a commutation the rentcharge is apportioned among the lands of a parish, and each portion has to bear its share unless more than one portion belongs to the same owner, when all the lands in the parish so held are liable (*n*); and it is in some cases, even now, often desirable to re-adjust the apportionment (*o*). This the Board of Agriculture, with consent of the owners, has power to do (*p*). Where a contract for sale contains no provision as to apportionment the purchaser cannot call on the vendor to procure one (*q*).

Exceptions from the Tithe Acts.—(1) Easter offerings, mortuaries, and surplice fees, which are commutable, but are not included with the tithes, unless expressly mentioned in the commutation agreement (*r*). (2) The same rule applies to tithes of fish and of fishing, and to personal tithes other than the tithes of mills, and to mineral tithes (*r*). (3) Payments in lieu of tithes in London, or *ad valorem* tithe payments in any city or town under any custom or private

(*k*) 6 & 7 Will. 4, c. 71. s. 41.
(*l*) 23 & 24 Vict. c. 93, ss. 18—20.
(*m*) 6 & 7 Will. 4, c. 71, s. 43.
(*n*) 6 & 7 Will. 4, c. 71, ss. 55, 58, 85; T. A. 1891, ss. 1, 2, 8; see *post*.
(*o*) 6 & 7 Will. 4, c. 71, s. 81; see also T. A. 1891, s. 2 (3).
(*p*) 6 & 7 Will. 4, c. 71, s. 72; 23 & 24 Vict. c. 93, ss. 11—17.
(*q*) *Re Ebsworth* (1889), 42 Ch. D. 23.
(*r*) 6 & 7 Will. 4, c. 71, s. 90. As a rule, fish caught in the sea are tithable by custom, but not so fish in rivers or ponds. See Burn.

Act, or any tithes commuted or extinguished under any former statute (*s*).

Tithe rentcharge may be extinguished (1) by payment of money; (2) by gift of land; (3) by merger.

(1) Where the rentcharge does not exceed 20*s*. the Board of Agriculture may, if they see fit, upon the application of the owner of the land, or of the person entitled to the rentcharge thereon, by an order under their hands and seal, direct that such rentcharge shall be redeemed by the payment, within such time as the Board shall direct, of a sum of money equal to twenty-five times the amount of the rentcharge (*t*). Where the rentcharge exceeds 20*s*. the consent of the bishop and patron is an additional requisite, whenever the person entitled to the rentcharge is entitled thereto in right of any benefice or cure (*u*). Where the land is used for public purposes or subdivided into very small plots, the Board may compel a redemption (*x*). The consideration money is paid to the owners in fee of the rentcharge, but if they are spiritual persons entitled in respect of their benefice or cure it is paid to Queen Anne's Bounty for the augmentation of the benefice (*y*). Extraordinary charge on hop-grounds, &c. (see *ante*), or the rentcharge in lieu thereof, may be redeemed at any time by paying the capital value of the charge (which is already fixed). Where the owner is an incumbent the money is paid to the Governors of Queen Anne's Bounty; or where there is an absolute owner, to him; otherwise into the Bank of England to the account of the Paymaster-General (*z*).

(2) Any landowner may give land not exceeding twenty acres, with the approval of the Board of Agriculture, in

(*s*) 2 Ste. Com. 764, n.; and 23 & 24 Vict. c. 93. As to London, see *ante*, p. 325; and *Wagstaff* v. *Common Council* (1908), 25 T. L. R. 1.

(*t*) 41 & 42 Vict. c. 42, s. 3.

(*u*) *Ibid.* s. 4.

(*x*) *Ibid.* ss. 1 and 5. For details of procedure to effect a redemption, see 9 & 10 Vict. c. 73; 23 & 24 Vict. c. 93.

(*y*) 9 & 10 Vict. c. 73, ss. 7 and 8.

(*z*) 49 & 50 Vict. c. 54, s. 5; and T. A. 1891, ss. 9 (2) and 10 (4). See *post*.

lieu of tithe or tithe rentcharge, whether rectorial or vicarial (*a*).

(3) Tithe rentcharge (*i.e.*, *appropriated* tithe rentcharge) does not merge when the lands and rentcharge belong to the same person; but the owner, whether legal or equitable, and whether the lands are freehold or copyhold, may merge it by a declaration by deed made with the approval of the Board, and thereupon the rentcharge is extinguished (*b*).

Payments of the rentcharge come within the Apportionment Act, 1870. They are deemed to accrue from day to day, and to be apportionable in respect of time (*c*).

Recovery.—Under the Tithe Act, 1891, tithe rentcharge for each year is payable half-yearly on the 1st July and 1st January, by the *owner* of the lands out of which the rentcharge issues (*d*), and an agreement by the tenant to pay is void (*e*).

Formerly, if in arrear for twenty-one days, tithe rentcharge might have been recovered by distress and entry by the tithe owner after ten days' notice, in the same way as a landlord may recover rent reserved by a common lease; but the present mode of recovery is through the County Court under the provisions of the Tithe Act, 1891 (*f*), by which it is enacted that where tithe rentcharge is in arrear for not less than three months, the person entitled may, whatever is the amount, recover by applying to the County Court of the district in which the lands or any part thereof are situate, in the manner prescribed (*g*). Tithe rentcharge as defined by this Act cannot be recovered in any other manner except where the lands are occupied by the owner, when the old procedure by distress may be resorted to (*h*). But as tithes are

(*a*) 6 & 7 Will. 4, c. 71, ss. 29, 62; 2 & 3 Vict. c. 62, ss. 19—21; 5 & 6 Vict. c. 54, s. 6.

(*b*) 6 & 7 Will. 4, c. 71, s. 71; 1 & 2 Vict. c. 64; 2 & 3 Vict. c. 62, s. 7; 9 & 10 Vict. c. 73, ss. 18, 19.

(*c*) 33 & 34 Vict. c. 35, s. 2.

(*d*) 54 & 55 Vict. c. 8, s. 1.

(*e*) *Ludlow* v. *Pike*, [1904] 1 K. B. 531.

(*f*) 54 & 55 Vict. c. 8, s. 2.

(*g*) Rules under the Act have been duly made and issued, and are called the "Tithe Rentcharge Recovery Rules, 1891." (Parl. Paper, 1891, 193. Price 2½*d*.)

(*h*) 54 & 55 Vict. c. 8, s. 2 (2).

not a charge on the inheritance of the lands, a sale cannot be claimed in order to recover arrears (*i*), but, if there is not sufficient distress, possession may be taken under a writ of *habere facias possessionem* (*k*), and the lands may be let for any period not exceeding one year in possession (*l*).

Not more than *two* years' arrears can be recovered (*m*).

Where lands are let at a rent insufficient to enable the receiver to recover from the owner, the Court may direct that the order for such recovery shall be executed as if the occupier were the owner, but full right is reserved to the occupier to recover from the landlord all moneys recovered from him, and costs (*n*), with interest at four per cent.

An application to a County Court for an order under this Act may be made on behalf of the tithe owner by his agent, although not a solicitor (*o*).

There is an appeal from the County Court to the High Court (*p*).

When the tithe rentcharge exceeds two-thirds of the annual value of the lands, the County Court has power to grant a remission order, which is subject to re-adjustment every twelve months (*q*).

TITLE TO ORDERS. A person wishing to be ordained deacon or priest must have "some certain place where he may use his function." Therefore, unless a fellow or chaplain elect in some college in Oxford or Cambridge, he must, for deacon's orders, have a nomination to a curacy, and for priest's orders either a nomination to a curacy or a presentation to a living (*r*). Masters of Arts of five years' standing

(*i*) *Bailey* v. *Badham*, *ubi sup.* As to arrears of rates, see *Roberts* v. *Potts*, [1894] 1 Q. B. 213.

(*k*) 6 & 7 Will. 4, c. 71, s. 82; T. A. 1891, s. 2 (2).

(*l*) 5 & 6 Vict. c. 54, s. 12.

(*m*) 6 & 7 Will. 4, c. 71, s. 81.

(*n*) 54 & 55 Vict. c. 8, s. 4.

(*o*) *Ibid.* s. 5.

(*p*) *Ibid.* s. 7. For fees, see schedule to the Act.

(*q*) *Ibid.* s. 8; and as to appeals under this section, see *Reg.* v. *Commissioners*, [1895] 2 Q. B. 123. As to giving a certificate of value, see *R.* v. *Petersfield*, [1894] 63 L. J. Q. B. 357.

(*r*) Can. 33.

living at the University at their own charges are not now considered to have a title (*s*).

The necessity for obtaining a title is supposed to prevent the clergy from becoming too numerous. But it does not really have this effect, as it is open to any incumbent to employ a succession of deacons as curates. The real remedy for overcrowding lies with the bishops, for a bishop is liable for the maintenance of the ordinee if he ordains when there is no proper vacancy (*t*). (*See* ORDERS.)

TITLES, ECCLESIASTICAL. (*See* ARCHBISHOP; BISHOP; REVEREND.)

TOLLS on turnpike roads are not payable by any rector, vicar, or curate going to or returning from visiting any sick parishioner or on other his parochial duty within *his* parish (*u*); and if, on such an occasion, he rides in a carriage, he is not disentitled to the exemption by reason of his having other persons in the carriage with him (*x*). A clergyman going to render temporary assistance to a neighbouring clergyman is not entitled to the exemption (*y*), but he is if appointed temporarily *the curate* of a neighbouring parish, even if his appointment is informal; and, in such case, the exemption extends to a turnpike outside the parish to which he is going on parochial duty (*z*).

Also, tolls are not payable by persons on their way to or from their *usual* place of religious worship tolerated by law on Sunday or on any day on which Divine Service is, by authority, ordered to be celebrated (*a*). The section, prob-

(*s*) Cripps, p. 9.

(*t*) Can. 33, which is to same effect as a decree of Lateran Council, 1179, and no doubt acted on in England at the time; but it may be doubted whether it has been continuously enforced so as to become a rule of the common law. *See* CANON LAW, and *Exeter* v. *Marshall* (1868), L. R. 3 H. L. 53.

(*u*) 3 Geo. 4, c. 126, s. 32; 4 Geo. 4, c. 95.

(*x*) *Layard* v. *Ovey* (1868), L. R. 3 Q. B. 415.

(*y*) *Brunskill* v. *Watson*, *ibid.*, p. 418.

(*z*) *Temple* v. *Dickinson* (1858), 28 L. J. M. C. 10.

(*a*) 3 Geo. 4, c. 126, s. 32; 4 Geo. 4, c. 95.

ably, would not apply where a person went to different places of worship as a mere matter of choice. Where, however, a dissenting minister in pursuance of the directions of his superior spiritual authority has to preach sometimes at one place and sometimes at another in fixed order and at fixed times, each of such places is his "usual place of worship" (*b*). Funerals and persons attending them are exempt from tolls (*c*).

Toll gates are now rapidly disappearing under the provisions of recent statutes (*d*).

TRANSLATION is the transfer of an official from one post to another. Bishops are often translated; on such a translation no consecration is necessary (*e*). In a case of *congé d'élire*, the old see is not void till confirmation to the new one (*f*).

TRANSUBSTANTIATION, as to the doctrine of, *see* PRESENCE.

This doctrine was renounced by the Church of England at the Reformation, together with the Invocation of Saints and the Sacrifice of the Mass as practised in the Church of Rome. Up to the year 1867 a declaration against these doctrines had to be taken in order to enjoy certain civil offices (*g*). This has now been done away with, but the Act does not enable Roman Catholics to hold offices other than those to which they were then entitled (*h*).

TRUSTEES. In parochial charities the minister and churchwardens are usually *ex officio* trustees, but, in any case, it appears to be their duty to see that the funds are properly administered. The trustees of a Church of England

(*b*) *Smith* v. *Barnett* (1870), L. R. 6 Q. B. 34.
(*c*) 20 & 21 Vict. c. 81, s. 14.
(*d*) See 3 Ste. Com. 151.
(*e*) Godolphin, 29.
(*f*) *Evans* v. *Askwith* (1627), W. Jones, 158.
(*g*) For form, see PROTESTANT SUCCESSION. This declaration was taken by all our Sovereigns from Queen Anne to Edward VII.
(*h*) 30 & 31 Vict. c. 62.

school ought to be members of the Church, but it is not a *sine quâ non* (*i*). By the Local Government Act, 1894, when the charity is a non-ecclesiastical one, the parish council may appoint trustees in place of churchwardens (*k*).

By the Compulsory Church Rates Abolition Act, 1868, a body of trustees called "church trustees" may be appointed in any parish for the purpose of accepting and holding any property which may be given to them for ecclesiastical purposes in the parish. The trustees are to be the incumbent (who is to be chairman) and two householders or owners or occupiers of land in the parish, one to be chosen by the patron and the other by the bishop. They are a body corporate. They may, from time to time, pay any funds in their hands to the churchwardens to be applied for general or special ecclesiastical purposes in the parish; but due regard must be had to the directions of the donors of funds contributed for any special ecclesiastical purposes. They are empowered to invest in government or real securities and accumulate income, or otherwise deal with the funds as they may think expedient, subject to the provisions of the Act. They must, once at the least in every year, lay before the vestry accounts of their receipts and expenditure (*l*).

The Trustees Appointment Acts, 1850, 1869, and 1890 (*m*), also deal with the mode in which property may be held by trustees for religious societies. By the Act of 1890 these Acts are extended so as to apply to land when such land is held in trust for a place for religious worship, or for the expenses connected therewith, or for a burial ground, minister's house, or for other buildings for religious or educational purposes as mentioned in the Act (*n*). Any statutory power for the appointment of new trustees (*e.g.*, under the Conveyancing Act, 1881, and Trustee Act, 1893) for the

(*i*) See Tudor, p. 193, and cases there referred to; *Re Perry* and *Re Ross*, [1899] 1 Ch. 21. *See* CHARITIES.

(*k*) 56 & 57 Vict. c. 73, s. 14, sub-s. (2).

(*l*) 31 & 32 Vict. c. 109, s. 9. *See* ADVOWSON.

(*m*) 13 & 14 Vict. c. 28; 32 & 33 Vict. c. 26; 53 & 54 Vict. c. 19.

(*n*) 53 & 54 Vict. c. 19, s. 2.

time being in force is to apply; provided that where there is a qualification for the office of trustee only qualified persons can be appointed, and where there is a power under some instrument, the statutory power shall not be exercised for twelve months. The Act also contains provisions as to evidence of due appointment of trustees and as to vesting (*o*).

VACANCY. (*See* BENEFICE; CHAPTER.)

VAULT, a burial place or tomb (*p*). A vault in a church may be prescribed for, and generally the same rules apply to vaults as to pews (*q. v.*): thus the right to separate burial in a particular vault may be attached to a house (*q*). The Privy Council has stated that only very exceptional circumstances can now justify the grant of a faculty for interments in chancels or the body of churches (*r*). In a case where there was no churchyard a faculty was granted to the lay impropriator to construct a vault under the chancel accessible from the exterior only, on condition of his consenting to allow a sufficient piece of ground near the aperture to the vault to be first duly consecrated for the sole and special purpose of burials in this vault (*r*).

When burial places are closed by authority the rights of private individuals are usually preserved. The closing Acts do not apply to St. Paul's and Westminster Abbey.

VESTMENTS. It seems certain that the early Christian ministers wore no distinctive vestments in which to minister. There is no allusion to the subject in the New Testament. But subsequently vestments of *white* came into use, this being the usual priestly garb in all religious bodies, pagan and Christian. The wearing of coloured vestments arose later, when the Church began to vie with the pagans in the

(*o*) 53 & 54 Vict. c. 19, ss. 3—7; as to trustees generally, see Lewin on Trusts.

(*p*) *See* CHURCHYARD; BURIAL.

(*q*) *Bryan* v. *Whistler*, cited under PEWS (*q. v.*).

(*r*) *Rugg* v. *Kingsmill* (1868), L. R. 2 P. C. 59.

matter of gorgeous ceremonies (*s*). In the pre-Reformation Church of England the vestments were those of the Romish Church, the six garments worn by priests being named *amesse, alba* (*q. v.*), *cingulum, stola* (*q. v.*), *manipulus*, and *planeta* (*t*).

The vestments in general use in the reformed Church of England are the surplice (*q. v.*), tippet (*q. v.*), hood (*q. v.*), and black gown (*q. v.*). The cope (*q. v.*) may possibly also be used in cathedrals and collegiate churches at Holy Communion, though custom is against it. The use of the surplice is enjoined by both statute and canon, the use of the hood and tippet (or, as it is sometimes erroneously termed, the black stole), by canon and custom (*u*). The black gown (for sermon) is firmly established by ancient custom and legal decision (*x*).

The chasuble, alb, tunicle (*y*), biretta, girdle, and stole (*z*), are all illegal (*a*).

The following is shortly the history of the vestment question:—As before stated, the pre-Reformation vestments of the English clergy were those in general use in the Romish Church. The first Prayer Book of Edward VI. (1549) contains a rubric at the beginning of the Communion office by which the vestment (*i.e.*, chasuble) or cope, alb, and tunicle were ordered. These vestments were abolished and the surplice substituted by the second Prayer Book of Edward VI. (1552), in which the vestments rubric ran as follows:—"The minister at the time of the Communion and all other times in his ministration shall use neither alb, vestment, nor cope,

(*s*) *See* PUBLIC WORSHIP, Ritual. "Likewise were the vestures used in the church in old time very plain and single and nothing costly": Homily against Peril of Idolatry, part 3.

(*t*) Cowel, cit. Wharton. As to vestments generally, see Smith's Dict. Chr. Ant.

(*u*) Cans. 58 and 74; *Hebbert* v. *Purchas* (1870), L. R. 3 P. C. 605; *Ridsdale* v. *Clifton, ubi inf.*

(*x*) *Re Robinson*, [1897] 1 Ch. 85.

(*y*) *Ridsdale* v. *Clifton* (1877), L. R. 2 P. D. 321.

(*z*) *Enraght* and *De la Bere Cases*, 7 App. Cas. 240; 6 P. D. 157; *Green's Case* (1882), 8 P. D. 79; *Elphinstone* v. *Purchas* (1870), 3 A. & E. 66; *Hebbert* v. *Purchas* (1870), L. R. 3 P. C. 605.

(*a*) Drawings of these vestments will be found in Miller's Ecc. Law.

but being archbishop or bishop, he shall have and wear a rochet, and being a priest or deacon he shall have and wear a surplice only" (*b*). The mass vestments were provisionally retained by the 1 Eliz. c. 2, s. 25 (1559), until other order should be taken therein by the authority of the Queen's Majesty, with the advice of certain commissioners or of the metropolitan. The Act of Elizabeth did not "schedule" a new Prayer Book, but a revised 1552 book was issued, not by authority of Parliament, in which the ornaments rubric was altered ostensibly to agree with the statute. This rubric, therefore, was of no authority, except in so far as it did agree with the statute (*c*). No special form of consulting the metropolitan is prescribed to the Queen. But the Injunctions (of 1559) and Advertisements of Elizabeth established a new order within a few years from the passing of the Statute under which chasuble, alb and tunicle disappeared (*d*). That this new order was carried into effect and enforced as law there is complete proof (*e*). The canons of 1603-4 and 1640 also accord with this view of the statute law. In 1662 the revisers of the Prayer Book under another form of words, repeated the rubric containing the obsolete reference to the second year of Edward VI., and they did so advisedly as the accepted reference to the existing law after attention had been called to the possibility of a return to the Romish vestments (*f*). To these vestments they never

(*b*) This Prayer Book was of statutory force, forming part of 5 & 6 Edw. 6, c. 1.

(*c*) This rubric, or rather note of reference of 1559, was printed irregularly, and was not statutory. There is no direction in 1 Eliz. c. 2, to delete the O. R. of 1552, set out above. It may be doubted whether sect. 25 (the wording of which is ambiguous) had anything to do with wearing of vestments in church. It may mean simply that illegal ornaments were not to be destroyed, made into table coverings, &c., until other order. The facts are in accord with this view. See the matter discussed in Tomlinson on Royal Visitations, and article by the Author in *Churchman*, reprinted by Church Association.

(*d*) *Hebbert* v. *Purchas* (1870), L. R. 3 P. C. at p. 643. No evidence has been adduced that the Mass vestments were ever used after the passing of the 1 Eliz. c. 2.

(*e*) See the visitation articles of the bishops, including Sandys, Aylmer, Andrewes, Overall, and Wren, cited in *Ridsdale* v. *Clifton*, and *Hebbert* v. *Purchas, ubi sup.*

(*f*) *Ibid.* 643.

meant to return, and never did return; and nobody can therefore impute to them a deliberate intention to alter the substance of the law. In fact the Uniformity Act of 1662, of which our present ornaments rubric forms part, incorporates the 1 Eliz. c. 2. It has therefore been finally decided by the highest tribunal, the Privy Council, that the Act of 1662 did not repeal the Act of 1 Eliz. or the order taken under it. For this purpose their lordships say there must be a clear and distinct repealing enactment, or an enactment inconsistent or irreconcilable with the former law (*g*). Their lordships also attached great importance to the abundant evidence which exists, that up to about 1840 the practice was uniformly in accordance with their view (*h*); contemporaneous and continuous usage being of the greatest efficacy in law for determining the true construction of obscurely framed documents (*i*). So far as the "question of law" is concerned, the judgment in *Ridsdale* v. *Clifton* is in accord with that in *Hebbert* v. *Purchas, i.e.*, that chasuble, alb and tunicle are illegal, and no alteration or reversal of the law can be brought about except by means of an Act of Parliament (*k*).

The position as to vestments generally may, perhaps, be shortly summed up thus:—In 1559 or soon after the law was settled, and the new order established, and, for the next 300 years, the uniform practice which was enforced by the bishops was, in parish churches and cathedrals, to wear surplice, tippet, and hood during "Service," and a black gown for the sermon; and in cathedrals, copes at the Communion were very occasionally used, and have long since been discontinued (*l*); while the alb, chasuble, tunicle, stole, and biretta were unheard of. It must therefore now be taken that this ancient practice is the correct interpretation of the

(*g*) *Ridsdale* v. *Clifton, ubi sup.*, p. 327.

(*h*) *Ibid.*, p. 330.

(*i*) *Hebbert* v. *Purchas, ubi sup.* In the present case, if necessary, a lost document containing the "other order" could be presumed; see joint opinion of Mr. (now Lord) Haldane and the Author, printed in the *Church League Gazette*.

(*k*) *See* APPEAL.

(*l*) *See* COPE.

law, for, as Lord Campbell says in another case, "There would be no safety for property or liberty if it could be successfully contended that all lawyers and statesmen have been mistaken for centuries as to the true meaning of an old Act of Parliament" (*m*).

The doctrine of a minimum of ritual represented by the surplice, with a maximum represented by a return to the mediæval vestments, is inconsistent with the fact that the rubric is a positive order, under a penal statute accepted by each clergyman (*n*).

The purpose of the Act was to establish uniformity.

The Ritual Commissioners in 1867 found that, whilst the illegal vestments were by some regarded "as symbolical of doctrine, and by others as a distinctive vesture whereby they desire to do honour to the Holy Communion as the highest act of Christian worship, they are by none regarded as essential, and they give grave offence to many."

The peculiar vestment of a bishop is the rochet (*q. v.*). The mitre and pastoral staff (*q. v.*) are illegal on the principles of the Privy Council decisions. They are also quite unwarranted by custom.

VESTRY, or Vestiary. (1) The place, anciently called the sacristy, where the minister's vestments are kept, and which is *primâ facie* part of the church (*o*); (2) an assembly of the minister, churchwardens, and parishioners, so called because commonly held in the "vestry" (*p*).

The only duties of an ecclesiastical nature which a vestry, as a general rule, now has to perform are—the election of a churchwarden (*q. v.*), the levying of church rates (*q. v.*), and the reception of the accounts of church trustees (*q. v.*). The vestry cannot clothe the churchwardens with any authority

(*m*) *Gorham* v. *Bishop of Exeter* (1850), 15 Q. B. 74, cited in *Ridsdale* v. *Clifton, ubi sup.*, p. 331.

(*n*) *Hebbert* v. *Purchas* (1871), L. R. 3 P. C. 645. See also the Report of Canterbury Convocation (1908), and compare with that of the Convocation of York (1908).

(*o*) *Wing* v. *Taylor* (1861), 30 L. J. P. & M. 258.

(*p*) See Shaw's Par. Law, 561.

not inherent in their office, and neither vestry nor churchwardens have any power to decide what ornaments of a church are proper, or to order them to be defaced (*q*); or to interfere (except by observation and complaint) with the manner in which the services are conducted. Anciently, it is said, all the affairs of a parish, as such, whether ecclesiastical or civil, were regulated in vestry; and the adoption of parochial church councils, which of late years has been much advocated, is a return to the old system (*r*).

Vestries are either *general* or *common*, *i.e.*, composed of all the parishioners who are ratepayers; or *select*, *i.e.*, composed of certain selected parishioners, the number being fixed by custom or statute. As a general rule, the same regulations apply to select as to common vestries. Hobhouse's Act, 1831, may be voluntarily adopted in any parish not in the metropolis, provided that "nothing in the Act shall extend to any parish, not being within or being part of any city or town, in which parish there shall not be a greater number than 800" ratepayers. It provides for the appointment of select vestries, and contains various special provisions (*s*). In the metropolis vestries are elected under the Metropolis Management Act, 1855 (*t*).

General vestries (except in the city of London and borough of Southwark) are regulated by the common law as supplemented by Sturges Bourne's Act, 1818, and subsequent statutes. Sect. 1 of Bourne's Act has been held to apply only to ordinary common law vestries, and not to parishes created under the Church Building Acts for ecclesiastical purposes only and not separately maintaining their own poor (*u*).

(*q*) *Ritchings* v. *Cordingley* (1868), L. R. 3 A. & E. 116. *And see* ORNAMENTS.

(*r*) The *civil* duties of vestries are now (except in London) performed by parish councils and are not within the scope of this book. See Steer's Parish Law, Glen's Poor Law, &c., &c.

(*s*) 1 & 2 Will. 4, c. 60, ss. 1, 43.

(*t*) 18 & 19 Vict. c. 120; and see further, as to select vestries, 1 Ste. Com. 123—126; Steer's Par. Law, and Phill. E. L. 1890; and *R.* v. *Soutter*, [1891] 1 Q. B. 57.

(*u*) *R.* v. *Barrow* (1869), L. R. 4 Q. B. 577.

Meetings.—By the common law, a vestry is summoned by the churchwardens with the consent of the minister: and by the Vestries Act, 1837, the notice convening the meeting must be signed by a churchwarden, rector, vicar, curate, or overseer of the poor of the parish (*x*). Therefore a private parishioner may not summon a vestry (*y*); he must get the churchwardens to do so, or, if necessary, apply for a *mandamus* (*q. v.*). Three days' notice must be given, and such notice must be affixed on or near the principal door of each of the churches and chapels in the parish previously to the commencement of the service at which such notices were formerly published. The place and hour of holding the meeting, and the special purpose thereof, must be stated (*z*). The incumbent and churchwardens have absolute power to fix the time in the day, and the parishioners cannot alter it (*a*).

In small parishes meetings are held in the vestry room, and sometimes in the church, or in a private house, but in large parishes in a room specially provided or hired for the purpose. By an Act of 1850, where the population of any parish exceeds 2,000 at the last census, an order of the Local Government Board can be obtained upon application of the churchwardens or overseers, pursuant to a resolution of the vestry, ordering that after twelve months from the making of the order no vestry meeting or any other meeting of the inhabitants of the parish, except for Divine worship or some ecclesiastical or charitable object, or some other purpose approved by the bishop, shall be holden in any consecrated church or chapel, nor, except in case of urgency and with the previous approval of the Board, in the vestry room attached to such church or chapel; and in the same Act provisions are contained for the purchase or hire of suitable rooms (*b*).

(*x*) 1 Vict. c. 45, s. 3.
(*y*) See *Dawe* v. *Williams* (1824), 2 Add. 139.
(*z*) 58 Geo. 3, c. 69, s. 1; 1 Vict. c. 45, ss. 2, 3.
(*a*) *Reg.* v. *Wilson* (1880), 49 L. J. Q. B. 870.
(*b*) 13 & 14 Vict. c. 57, ss. 1—5; 24 & 25 Vict. c. 125.

The rector, vicar or perpetual curate is entitled to preside at all meetings. In his absence the vestry proceed to elect a chairman by votes (*c*). For although the minister is the proper head of the vestry, he is not an essential part of it (*d*). It is doubtful whether a curate, or *locum tenens* of any kind, has a right to take the incumbent's place (*c*). The chairman has a casting vote (*c*). He must not improperly refuse to put an amendment. Thus, in a recent case, it was proposed at a vestry meeting that a certain person should be re-elected churchwarden. An amendment was moved that a correspondence as to certain charity funds should be first produced. The vicar refused to put the amendment, and declared the person proposed duly elected churchwarden. It was held that the vicar was wrong (1) in refusing to put the amendment; (2) in not putting it to the meeting whether the person proposed should be elected churchwarden (*e*).

Minutes of the proceedings and resolutions of every vestry must be entered in a book, and signed by the chairman and such other of the inhabitants as shall think proper (*c*). The mode of election in vestry is by show of hands, but a poll is demandable as of right; the chairman is the proper person to grant it (*f*). The poll must be kept open sufficiently long, and be of sufficient notoriety, to enable one and all to vote, regard being had to numbers and distance (*g*). All qualified inhabitants, whether present at the show of hands or not, are entitled to vote at the poll (*h*). It is generally better, as regards disputed votes, to adjourn the poll for a scrutiny than to discuss the votes when tendered; but the chairman may decide as to the validity of the votes tendered. A scrutiny cannot be demanded as a matter of right (*i*). All

(*c*) 58 Geo. 3, c. 69, s. 2; but see 1 Vict. c. 45, s. 3, *ante*; *Wilson* v. *McMath* (1819), 3 Phil. p. 87.

(*d*) *Mawley* v. *Barbet* (1799), 2 Esp. 687.

(*e*) *R.* v. *Hagbourne* (1886), 51 J. P. 276.

(*f*) *R.* v. *D'Oyley* (1840), 12 A. & E. 139.

(*g*) *R.* v. *Winchester* (1806), 7 East, 573.

(*h*) *R.* v. *St. Mary* (1838), 8 A. & E. 356.

(*i*) Steer, P. L. 168, citing *R.* v. *Hammersmith* (1863), 3 B. & S. 504.

persons who pay or are liable to pay rates can vote, whether inhabitants or not; persons assessed under 50*l.* being entitled to one vote, over 50*l.* one vote for every 25*l.*, but no person can have more than six votes. Non-ratepayers or persons who neglect or refuse to pay rates are excluded from voting (*k*). The clerk or agent of a corporation or company may vote on its behalf (*l*). A ratepayer may add property held by him as executor to his own property in order to obtain an extra vote (*m*).

A meeting may be adjourned by the chairman, even against the will of the majority present, but on his own responsibility, if in so doing he improperly disturbs the proceedings (*n*). Business not finished may be lawfully completed at the adjourned meeting, although the notice for such adjourned meeting does not state the purpose (*o*).

The acts of one vestry are not absolutely binding on a succeeding vestry; but the confirmation of a succeeding vestry is not necessary to make the acts of a preceding one valid (*p*).

Vestrymen incur no separate or individual responsibility for anything done in pursuance of a resolution of vestry signed by them (*q*); but it has been held that where they actually guarantee the expenses of an action, they are personally liable (*r*).

VESTRY CLERK is chosen by the vestry (*s*). He holds his office either under the common law or the Act of 1850 (*t*). There is no particular qualification (*u*). The duties are the

(*k*) 58 Geo. 3, c. 69, ss. 3, 4; 59 Geo. 3, c. 85, ss. 1, 3; 16 & 17 Vict. c. 65.
(*l*) 59 Geo. 3, c. 85, s. 2.
(*m*) *R.* v. *Kirby* (1861), 31 L. J. Q. B. 3.
(*n*) *R.* v. *D'Oyley* (1840), 12 A. & E. 139.
(*o*) *Scadding* v. *Lorant* (1851), 3 H. L. C. 418.
(*p*) *Mawley* v. *Barbet* (1799), 2 Esp. 687.
(*q*) *Spratt* v. *Powell* (1826), 3 Bing. 478.
(*r*) *Hendebourck* v. *Langton* (1829), 3 C. & P. 566.
(*s*) The parish council cannot appoint; 56 & 57 Vict. c. 73, s. 17 (4).
(*t*) 13 & 14 Vict. c. 57, ss. 6—8.
(*u*) See *Pedley* v. *Chapman*, [1891] 7 T. L. R. 396.

usual ones of a secretary, and are very minutely defined in the Act. They include the keeping of the vestry books and churchwarden's accounts, and assisting the overseers with their accounts (*x*). The Act of 1850 only applies where the population of the parish exceeds 2,000. The vestry clerk is to be appointed at a special meeting convened for the purpose after seven days' notice, and he can only be dismissed with the consent of the Local Government Board. His salary is fixed by the Board, and paid out of the poor rate (*t*). No churchwarden or overseer is relieved of any duty by the appointment, nor is he obliged to avail himself of the services of such clerk (*y*).

VICAR. A vicar is a deputy or substitute; thus, anciently, all bishops were styled "Vicars of Christ" (*z*). In English law the term is usually applied to the incumbent of an appropriated benefice, who receives only part of the emoluments (generally speaking, a share of the glebe and the small tithes), and who is supposed to act as the deputy of the rector, who receives the great tithes. This arose from the system of appropriation of livings by monasteries, who were wont to depute one of their own body to perform Divine Service. The stipend and term of office of such deputy or vicar were entirely at the discretion of the appropriator, and consequently the parish priest, in appropriate livings, was in reality no more than a "curate" (*a*). And Blackstone says the parish work was done in so scandalous a manner, and the parishes suffered so much by the neglect of the appropriators, that the legislature was forced to interpose. So long ago as 1391 (*b*), it was enacted that the vicarage should be sufficiently endowed, and in 1402 it was ordained that the vicar should be a secular person, *i.e.*, not a member of a religious house, and that he should be a vicar

(*x*) 13 & 14 Vict. c. 57, s. 7.
(*y*) *Ibid.* s. 9.
(*z*) Bingham, Ant. p. 78.
(*a*) In France a curate is still called *vicaire*.
(*b*) 15 Ric. 2, c. 6; and see 1 Bla. Com. 387.

perpetual, not removable at the caprice of the monastery, and that he should be canonically instituted and inducted, and be sufficiently endowed, at the discretion of the ordinary, for these three express purposes—to do Divine Service, to inform the people, and to keep hospitality (*c*). In obedience to this statute, some vicarages were fairly well, and others very scantily, endowed; but in all cases the appropriators kept a large share of the emoluments to themselves, which, at the Reformation, in some cases passed into the hands of laymen, who are called lay impropriators.

Of parochial churches, therefore, some have been appropriated, others have not; in a non-appropriated living there is no vicar, but a rector only, who must be a spiritual person, and has the cure of souls in the parish, with the exclusive title to all the emoluments; in an appropriated living there is generally, besides the appropriator, a vicar, and in churches so circumstanced (termed vicarages) the appropriator never (as appropriator) has the cure of souls within the parish, which is committed to the vicar (*d*). The vicar, like the rector, is seised of a kind of freehold life interest (*e*), but the appropriator is also seised, subject to the vicar's interest, and as a general rule is solely seised of the chancel.

In some cases, however, the vicarages were not endowed at all under the statute of Henry IV., and these were called perpetual curacies. A perpetual curate was, however, of the same general description as an endowed vicar, and, since 1868, the incumbent of the church of every parish or new parish for ecclesiastical purposes, not being a rector, who is authorized to publish banns, and solemnize marriages, churchings, and baptisms in such church, and receive the entire fees for his own use, is, for the purpose of style and designation, but not for any other purpose, deemed and styled vicar, and his benefice a vicarage (*f*).

The vicar or perpetual curate is entitled to officiate in, and

(*c*) 4 Hen. 4, c. 12.
(*d*) 2 Ste. Com. 713.
(*e*) *See* INCUMBENT.
(*f*) 31 & 32 Vict. c. 117.

have free access to, the chancel, except in certain cases where it may form a private chapel; but he has no right, strictly speaking, to fees for the erection of monumental tablets or for the construction of vaults therein. A faculty for that purpose may be legally granted without his consent, but he has a *persona standi* by reason of his spiritual position as incumbent to oppose the grant of the faculty (*g*).

Vicarages may be converted into rectories whenever the impropriator surrenders the rectorial property; and this applies to subdivisions of vicarages. The vicar becomes rector without any new induction (*h*).

(As to the general rights and duties of a vicar, *see* INCUMBENT.)

VICAR-CHORAL. The assistant or deputy of the canons or prebendaries of cathedrals and collegiate churches in the discharge of their duties (*i*). The term vicar-choral has now been generally superseded by that of *minor canon* for the clergy, and *lay clerk* for the laity. Their duties are chiefly musical. In some cases they form endowed corporations, and an Act has been passed to enable them to obtain fixed incomes by transferring their property to the Ecclesiastical Commissioners (*k*). At Hereford they are subject to the authority of the Dean and Chapter (*l*).

VICAR-GENERAL is much the same as a chancellor (*q. v.*). The Archbishop of Canterbury and all the Irish bishops have vicars-general and not chancellors (*i*).

VISITATION, an inspection of clergy by a superior (*m*). Thus, the Crown, as supreme ordinary, visits the arch-

(*g*) *Rugg* v. *Kingsmill* (1868), L. R. 2 P. C. 65. *And see* CHANCEL.
(*h*) 3 Geo. 4, c. 72, ss. 13, 14.
(*i*) Hook, Ch. Dict.
(*k*) 27 & 28 Vict. c. 70.
(*l*) *R.* v. *Dean and Chapter of Hereford* (1897), 13 Times Rep. 374; and see *Innes* v. *Beddoe* (1897), 13 Times Rep. 466.
(*m*) As to visitors generally see *Philips* v. *Bury* (1694), 2 Term Rep. 346.

bishops (*n*); the archbishops, the bishops and the inferior clergy (*o*); and the bishops and their officials and deputies, the inferior clergy. Formerly the visitations extended to the laity, as nominally they still do. The canon states that the chief and principal cause and use of visitation is, that the bishop, archdeacon, or other assigned to visit, may get some good knowledge of the state, sufficiency, and ability of the clergy and other persons whom they are to visit; and therefore every clergyman must exhibit his letters of orders, institution, induction, and all his dispensations, licences, or faculties whatsoever at the next visitation after his admission to a living or curacy (*p*). Archdeacons' visitations are usually held soon after Easter, when churchwardens (*q. v.*) and sidesmen (*q. v.*) are admitted.

Bishops' visitations should take place once every three years (*q*), during which the archidiaconal powers may be suspended by inhibition (*r*).

The fees payable at an episcopal or archidiaconal visitation amount to 18*s.* in addition to procurations and synodals (*q. v.*) (*s*).

Some places, called peculiars (*q. v.*), are exempt from episcopal visitation, *e.g.*, Westminster Abbey, St. George's, Windsor, and the Chapels Royal, of all of which the Sovereign is visitor. The Sovereign also "visits" all places of which the Pope was visitor in pre-Reformation times (*t*).

WAFER BREAD. The wafer, properly so called, is a composition of flour and water, rolled very thin and unleavened. It is used in the Church of Rome at Holy Communion, but is illegal in the Church of England (*u*). The bread to be used in our Church must be "such as is usual to

(*n*) 3 Ste. Com. 25.
(*o*) See *Dean of York's Case* (1841), 2 Q. B. 1; *Kildare* v. *Dublin* (1724), 2 Bro. Parl. Cas. 179.
(*p*) Can. 137.
(*q*) Can. 60.
(*r*) *R.* v. *Sowter* in C. A., [1901] 1 K. B. 396.
(*s*) *See* FEES; CHURCHWARDEN.
(*t*) 25 Hen. 8, c. 21.
(*u*) *Ridsdale* v. *Clifton* (1877), L. R. 2 P. D. 349.

be eaten, but the best and purest wheat bread that conveniently may be gotten," or as it is called in the canon, "fine white bread" (*x*). What is substantially different will not "suffice," but it would seem that the shape of the pieces of bread is immaterial (*y*).

WALES, Church of, now forms four dioceses of the province of Canterbury. It originally formed one province of the ancient apostolic British Church, being under the rule of the Archbishop of Caerleon, whose see was afterwards removed to St. David's. It had a continuous uninterrupted existence during those troublous times 400—700 A.D., when the bishops of the eastern provinces of London and York were frequently forced to flee for their lives from the persecutions of the Saxon invaders. On the arrival of Augustin in A.D. 596, the Welsh Church refused to acknowledge the supremacy of the Bishop of Rome, or of the newly Rome-founded see of Canterbury; and it was not till about the middle of the 12th century that the Welsh bishops finally acknowledged the Archbishop of Canterbury as their primate. A similar state of things, therefore, exists in the English as in the Greek Church, where the most ancient sees in the world, those of Jerusalem and Antioch, acknowledge the primacy of the subsequently founded see of Constantinople. In both cases the result was due to political considerations.

It comprises at the present time about one-fourth only of the population (*z*).

The Welsh language is required by law to be used in the Established Church services throughout all the dioceses of Hereford, St. David's, St. Asaph, Bangor and Llandaff where the British or Welsh tongue is commonly used (*a*), but there must be a Bible and Prayer Book in English in every church (*b*). By a statute of Victoria the Welsh

(*x*) Rubric, Can. 20.
(*y*) *Ridsdale* v. *Clifton* (1877), L. R. 2 P. D. 349.
(*z*) See Report of Royal Commission, 1910; and DISSENTERS.
(*a*) 5 Eliz. c. 28; 13 & 14 Car. 2, c. 4, s. 27.
(*b*) *Ibid.*

bishops are authorized, on the application of ten or more inhabitants of any parish, to license a chapel for English services. The incumbent's rights are not to be affected, and if a minister is licensed to such chapel he has the right to nominate. If, however, he refuses, the bishop may, after three months from the receipt of the application (if due notice of the application is given by the persons applying to the incumbent), signify to the incumbent the name of a minister, and if the incumbent does not object within fourteen days the bishop may nominate and license such minister. If he does object, there is an appeal to the archbishop (*c*). By the Pluralities Act, 1885, no bishop may require more than one service in the Welsh language on every Sunday in a church or chapel of ease on the same benefice (*d*). The general rule is that the services must be in a tongue "understanded of the people" (*e*). The Welsh language may also be used for marriages in Nonconformist places of worship, and by civil registrars (*f*).

WASTE is where a limited owner, as a tenant for life, "doth make waste or destruction upon the land" (*g*). It is of two kinds—(1) voluntary, by wilful destruction of any part of the premises; (2) permissive, by permitting buildings to go to ruin (*h*). (*See* INCUMBENT.)

WHITSUN (Pentecost), one of the great feasts of the Church, seven weeks after Easter (*q. v.*). Certain offerings or oblations, called Whitsun farthings, smoke farthings, or Pentecostals, were formerly, and it is said are still in some few dioceses, payable at this season, and if denied are recoverable at law (*i*).

WORKHOUSE CHAPLAIN. Under the Poor Law Acts the Local Government Board has power to direct the guar-

(*c*) 26 & 27 Vict. c. 82.
(*d*) 48 & 49 Vict. c. 54, s. 2.
(*e*) Art. 24; and see 1 & 2 Vict. c. 106, ss. 103—105; BIBLE; CLERGY; INSTITUTION.
(*f*) 1 Vict. c. 22, s. 23; 61 & 62 Vict. c. 58, s. 14.
(*g*) Termes de la Ley.
(*h*) See Williams on Real Property, Pt. I., Ch. I.
(*i*) Burn, 3, 110.

dians or overseers of the poor of any parish or union to appoint *officers*, and this includes workhouse chaplains (*k*). The appointment must be confirmed by the bishop.

The duties are regulated by the orders of the Board, and the incumbent of the parish in which the workhouse is situated may not interfere with the performance of them (*l*). The duties of a Church of England chaplain comprise reading prayers, preaching, examining the children, and catechising such as belong to the Church of England, and keeping a record thereof, known as the "chaplain's report." But they may not interfere with inmates who are members of any other religious body.

A workhouse chaplain is removable by the Board at their absolute discretion (*m*); but as regards the bishop, he is in the position of an ordinary incumbent, and cannot be removed except for an ecclesiastical offence.

The workhouse chapel cannot be consecrated unless the freehold be conveyed to the Ecclesiastical Commissioners, and this it seems the guardians have no power to do (*n*).

Inmates of workhouses are not obliged to attend the Church services, but may be visited by ministers of their own persuasion; and, if necessary, dissenting chaplains (Roman or Protestant) may be appointed (*o*). Also, inmates may go out to their respective places of worship, and a register of their creeds is to be kept, to which access must be allowed to the ministers of the nearest dissenting places of worship (*p*).

Workhouse chaplains, as officers, are entitled to salaries and superannuation allowances (*q*). The salary is assignable, and may be mortgaged (*r*).

(*k*) 4 & 5 Will. 4, c. 76, ss. 46, 109; *R.* v. *Braintree Union* (1841), 1 Q. B. 130.

(*l*) *Molyneux* v. *Bagshaw* (1863), 11 W. R. 687; 9 Jur. N. S. 553. *And see* CHAPEL.

(*m*) *Ex parte Molyneux* (1863), 11 W. R. 233; 7 L. T. N. S. 599.

(*n*) See General Orders (consolidated), 1827, Art. 211; Glen's Poor Law Orders, 220.

(*o*) 4 & 5 Will. 4, c. 76, s. 19; 31 & 32 Vict. c. 122, s. 20; *R.* v. *Haslehurst* (1884), L. R. 13 Q. B. D. 253.

(*p*) 31 & 32 Vict. c. 122, ss. 16—19.

(*q*) For scale, see 59 & 60 Vict. c. 50, s. 3.

(*r*) *Re Mirams*, [1891] 1 Q. B. 594.

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